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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~442~~ 11

JUNIUS C. KLEIN, APPELLANT,

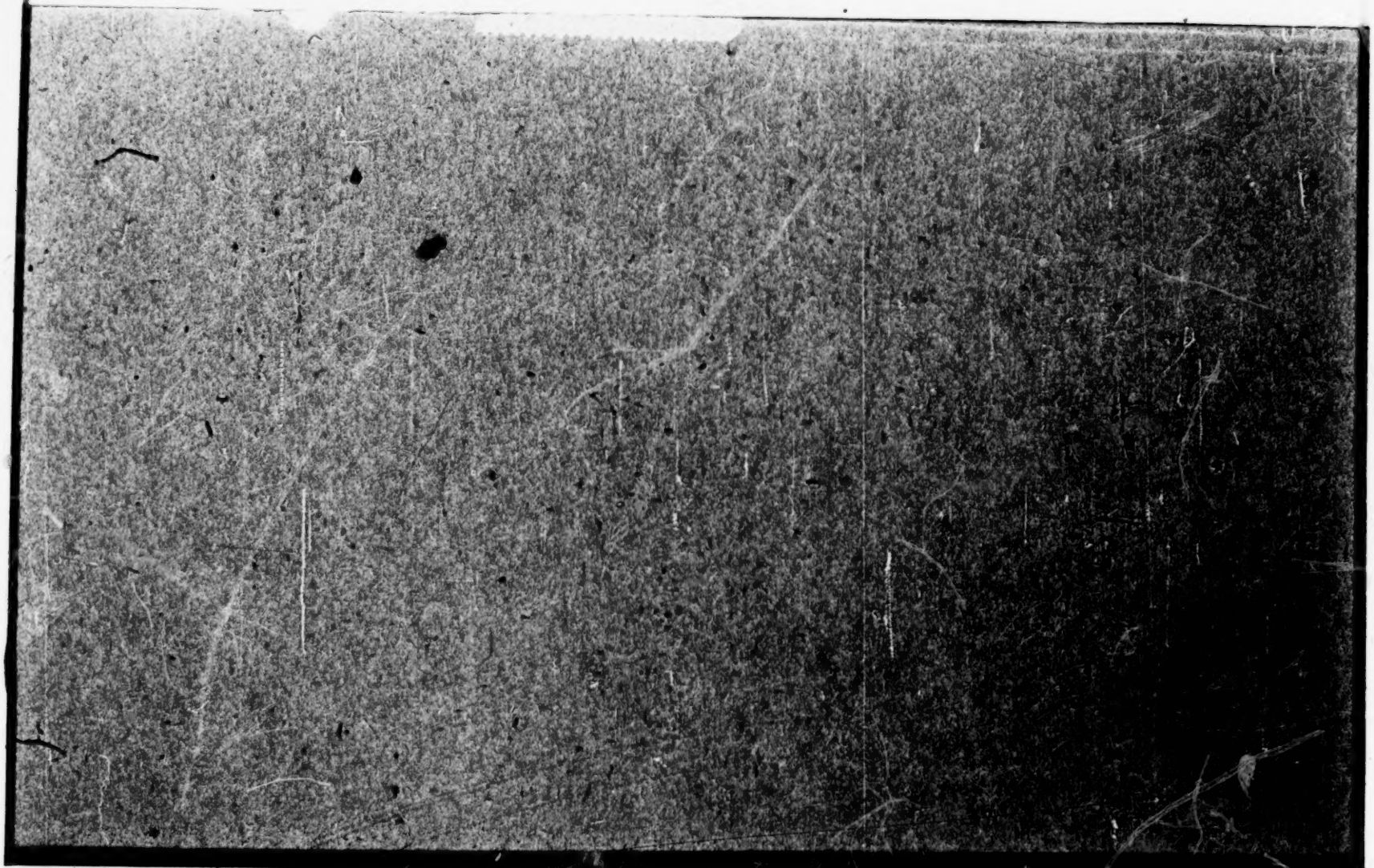
vs.

BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY

FILED OCTOBER 14, 1929

(34,573)



(34,573)

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 16, 1929

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[fols. 1 & 2] [Captions omitted]

[fol. 3]

IN QUARTERLY COURT OF JEFFERSON COUNTY, NOVEMBER TERM

No. 26195

JUNIUS C. KLEIN, Plaintiff,

versus

JEFFERSON COUNTY BOARD OF TAX SUPERVISORS, R. M. Martin, John Keller, E. W. Elliott, Ed. Plenge, William G. Fischer, John D. Moore, Walter F. Jacobs, George H. Hinesley, Defendants

JUDGMENT—Nov. 5, 1925; filed in Circuit Court Nov. 24, 1925

This cause coming on for hearing, came the appellant and tendered and moved to file an amended or supplemental statement on appeal, and the Court being advised, sustained his motion and ordered the amended or supplemental satement on appeal so tendered, filed, which is now done.

[fols. 4 & 5] And this action being submitted upon the pleadings and exhibits, it is ordered and adjudged by the Court that the action of the Jefferson County Board of Tax Supervisors in fixing and assessing for taxation for State purposes for the year 1925 of the common stock of the Standard Sanitary Manufacturing Company, held and owned by the appellant and all other holders and owners of such stock residing in Jefferson County, Kentucky at a valuation of $95 per share be, and the same is hereby sustained, and it is further ordered and adjudged by the Court that said valuation at $95.00 per share of the common stock of the said Standard Sanitary Manufacturing Company, at its fair cash value estimated at the price it would bring at a fair and voluntary sale thereof as of the first day of July, 1924.

It is further ordered and adjudged by the Court, that the appeal be and the same is hereby dismissed, to all of

which appellant and all other holders and owners of said common stock who reside in Jefferson County, Kentucky, object and except and pray an appeal to the Jefferson Circuit Court, which is hereby granted.

Certificates to foregoing paper omitted in printing.

[fol. 6] Bond on appeal omitted in printing.

[fol. 7] In Circuit Court of Jefferson County

Supersedeas

To Hon. Judge of the Jefferson Quarterly Court:

You are hereby enjoined from all proceedings on a judgment rendered in favor of Jefferson County Board of Tax Supervisors, B. M. Martin, John Keller, E. W. Elliott, Ed. Plenge, William G. Fisher, John D. Moore, Walter F. Jacobs and George Hinesley, against Junius C. Klein, by order of the Court fixing assessment for $200.00 and $13.10 costs, having appealed to the Jefferson Circuit Court, and given bond and security, according to law, in my office as Clerk of said Court, and you are hereby required to return the papers to said office.

Witness Frank Dugan, Clerk of said Court, this 24th day of Nov. 1925.

Louis Vissman, Clerk, by M. Canty, D. C.

[fols. 8 & 9] Came to hand Nov. 25, 1925, at 10.59 A. M.

Executed Nov. 25, 1925, on Judge of the Jefferson Quarterly Court, H. E. Tincher, by delivering to him a copy of the within Spds.

H. O. Gray, S. J. C., by A. Scharre, D. C.

Summons and sheriff's returns omitted in printing.

[fol. 10] In Quarterly Court of Jefferson County

[Title omitted]

[fol. 11] Appeal and Statement—Filed April 27, 1925; in Circuit Court, June 4, 1925

Appeal from the decision of the aforesaid appellees composing the Board of Supervisors of Tax for Jefferson County, State of Kentucky and the Board of Supervisors of Tax for Jefferson County, State of Kentucky, fixing the taxable value of property of the appellees, J. C. Klein.

Appellant states that he files herewith as part hereof marked "Exhibit A" a certified copy of the action of said Board of Supervisors of Tax for Jefferson County, State of Kentucky, under the hand of the Clerk of said Board.

Wherefore appellant prays that the action of the appellee, Board of Supervisors of Tax for Jefferson County, State of Kentucky, be set aside and held for naught, and that this Court adjudge that said assessment be assessed at the fair cash value estimated at the price said property would bring at a fair cash voluntary sale and for all equitable and proper relief.

J. C. Klein and Haswell & Lukins, Attys.

[fol. 12] Exhibit A to Appeal and Statement

State of Kentucky,
County of Jefferson:

Before Board of Supervisors of Tax for Jefferson County, Kentucky, for State and County taxes *for State and County taxes* for the year 1925, at regular session at Court House in City of Louisville, viz:

At meeting of said Board as aforesaid on March 11th, 1925, the following is entered of record:

Whereas, there has been applications made for a construction and equalization of the assessment of the stock of the Standard Sanitary Mfg. Co. and whereas the Board has received the following statements or instruments of writing, to-wit:

This day came Junius C. Klein by his attorneys, Haswell and Lukins, and in person and as a stockholder of the Standard Sanitary Manufacturing Company for himself and for the benefit and use of all other stockholders of said Company who are subject to taxation for State taxes for the year 1925, and filed objections and the reasons there-
[fol. 13] for, to the assessment of the tangible property of said Klein by raising his household furnishings from $350.00 to $1,500.00, his jewelry from $50.00 to $500.00 and his miscellany from $50.00 to $500.00 and to the assessment of the intangible property of said Klein from $443,190.00 to $468,023.00 which later included his holdings of Common Stock of said Standard Sanitary Mfg. Co. which said Klein for himsel- and for the other common stockholders of said Company claimed to have been assessed at a valuation far in excess of its fair cash value estimated at the price it would bring at a fair voluntary sale, which valuation was fixed by the County Tax Commissioner at $95.00 per share. And in support of his contentions and objections asked for a hearing and offered to produce evidence in support thereof at this time or at any other time as the Board should fix and determine, all of which the Board declined to do and by unanimous vote sustained the said assessments as had and made by the County Tax Commissioner of Jefferson County, without allowing the claimants herein to offer their proof in support of a reduction of said assessments.

Wherefore, said Klein, by counsel, on behalf of himself and all other common stockholders of said Standard Sanitary Manufacturing Company, subject to State taxes for the year 1925, prayed an appeal, to the Quarterly Court of Jefferson County, which is hereby granted.

Walter F. Jacobs.

[fol. 14] Louisville, Ky., March 12, 1925.

To the Honorable Board of Tax Supervisors for Jefferson County, State of Kentucky:

GENTLEMEN: The undersigned respectfully objects to the assessment made by the County Tax Commissioner of Jefferson County, State of Kentucky, against him both as to tangible and intangible property, as of the first day of July, 1924, for the purposes of State and County taxes for the

year 1925, and requests a review to be made of same and a reduction of the valuation of its fair cash value, estimated at what it would bring at a fair voluntary sale thereof.

The specific tangible property was duly listed by undersigned at a valuation in excess of its real cash value, but the County Tax Commissioner has arbitrarily and without notice to us, raised said valuation, without any evidence to support his figures.

The assessment as to intangible property consisting mainly of stock in the Standard Sanitary Manufacturing Company was valued by said County Tax Commissioner at $95.00 per share over the protest and objection of this claimant, when the fair cash value of same as of the first day of July, 1924, was not in excess of its book value which is shown by the books of said Company to have been $38.61 per share.

[fol. 15] The County Tax Commissioner of Jefferson County has also similarly assessed the holdings of all other stockholders of said Standard Sanitary Manufacturing Company subject to taxations in this County of Jefferson, State of Kentucky, at said valuation of $95.00 per share.

That the question of the valuation of said stock in the Standard Sanitary Manufacturing Co. involves a common and general interest of many persons and the holders and owners of said stock are numerous and that it is impracticle to bring all of them before this Board of Tax Commissioners within a reasonable time and therefore the undersigned enters his objection to said assessment and makes his claim for a reduction in the valuation, to $38.61 per share, for the benefit and use of all other holders of stock similarly situated for the purposes of State and County taxes for the year 1925.

The objections to said assessment of said stock in the Standard Sanitary Manufacturing Company as had and made by the County Tax Commissioner of Jefferson County for State and County taxes for the year 1925, at $95.00 per share are several:

1st. The assessment was made and based on a speculative valuation and not on the actual fair cash value as provided for by law in such cases made and provided for.

[fol. 16] 2nd. That the said County Tax Commissioner in arriving at his valuation, relied entirely on hearsay evi-

dence as shown by certain newspaper as reports sale of said stock and not on the actual fair cash value of same as of the 1st day of July, 1924.

3rd. That, in fact, there was no sale of said stock had or made on the 1st day of July, 1924, and none were shown to have been so made by the said newspaper reports and that the County Tax Commissioner averaged up the sales of said stock as reported by said papers for the week before and the week after the 1st day of July, 1924, without notice to or consulting us in the matter, all this being contrary to the provisions of the law, in such cases made and provided for.

4th. That the said average was obtained by the County Tax Commissioner from alleged reported sale of small number of shares, averaging about 10 shares per sale which we submit is not fair or equitable to the holders of large blocks of said stock.

5th. That the real and actual assets and property back of and representing the said common stock of said Standard Sanitary Manufacturing Company as shown by its books and by the annual report of Theo. Ahrens, the President of said Company, for the year 1924, was not in excess of the sum of $40,000,000.00, whereas the assessment of said stock at a valuation of $95.00 per share, means that the said assets and property amount to the sum of $90,000,000.00, [fol. 17] being over twice its actual fair cash value. That the said stock should not be assessed at any valuation over its said book value which was $41.93 per share on the 31st day of December, 1924, and $36.29 on the 31st day of December, 1923, or an average of $38.61 per share on the 1st day of July, 1924. The par value of stock is $25.00 per share.

6th. That more than one half of the Common Stock issued by said Standard Sanitary Mfg. Co. and outstanding on the 1st day of July, 1924, was held and owned by citizens of this State of Kentucky and at same time at least one-third of the total assets and properties of said Company were located in this State of Kentucky and duly assessed against said Company for the purposes of State and County taxes, all of which have always been and will be paid by said Company. That by virtue of this state of facts the assessment com-

plained of herein is double taxation and contrary to the constitution of the State of Kentucky and therefore unconstitutional, as the owners and holders of said stock are the true and real owners of all of assets and property of said Company.

(Signed) Julius C. Klein.

Louisville, Ky., March 7, 1925.

To the Honorable Board of Tax Commissioners for Jefferson County, State of Kentucky.

GENTLEMEN: We, the undersigned, holders and owners of the number of shares of the Common Stock of the Standard [fol. 18] Sanitary Manufacturing Company set opposite our names, respectfully object to the assessment of said stock made against us for purposes of State and County taxes, as of the 1st day of July, 1924, for said taxes for the year 1925, and request you to review said assessments and to reduce same to a fair cash value, which we submit was the value of same as shown by the books of said Company on the 1st day of July, 1924.

Our objections to said assessments as made by the Assessor of Jefferson County at $95.00 per share are several:

1st. The assessment was made and based on a speculative valuation and not on the actual fair cash value as provided for by law in such cases made and provided for.

2nd. That the said County Tax Commission in arriving at his valuation, relied entirely on hearsay evidence as shown by certain newspaper reports of sales of said stock and not on the actual fair cash value of same as of the 1st day of July, 1924.

3rd. That, in fact, there was no sale of said stock had or made on the 1st day of July, 1924, and none were shown to have been so made by the said newspaper reports and that the County Tax Commission averaged up the sales of said stock as reported of said paper for the week before and the week after the 1st day of July, 1924, without notice to or consulting us in the matter. All this being contrary to the provisions of the law, in such cases made and provided for.

[fol. 19] 4th. That, the said average was obtained by the County Tax Commission from alleged reported sale of small numbers of shares, averaging about 10 shares per sale, which we submit is not fair or equitable to the holders of large blocks of said stock.

5th. That the real and actual assets and property back of and representing the said Common Stock of said Standard Sanitary Manufacturing Company as shown by its books and by the annual report — Theo. Ahrens, president of said Company for the year 1924, was not in excess of the sum of $40,000,000.00 whereas the assessment of said stock at a valuation of $95.00 per share means that the said assets and property amounts to the sum of $90,000,000.00 being over twice its actual fair cash value. That the said stock should not be assessed at any valuation over its said book value which was $41.93 per share on the 31st day of December 1924, and $36.29 on the 31st day of December, 1923 or an average of $38.61 per share on the 1st day of July, 1924. The par value of stock is $25.00 per man.

6th. That more than one half of the Common Stock issued by said Standard Sanitary Manufacturing Company and outstanding on the 1st day of July, 1924, was held and owned by citizens of this State of Kentucky and at same time at least one third of the total assets and properties of said Company were located in this State of Kentucky and duly assessed against said Company for the purposes of State and County taxes all of which have always been and will be paid by said Company.

[fol. 20] That by virtue of this state of facts the assessment complained of herein is double taxation and contrary to the Constitution of the State of Kentucky and therefore unconstitutional, as the owners and holders of said stock are the true and real owners of all of the assets and property of said Company.

(Signed) Almstedt Bros., F. L. Almstedt, A. H. Almstedt, Henry Almstedt, Wm. C. Almstedt, R. H. Almstedt, Sophia M. Almstedt, Elsa S. Almstedt.

Louisville, Kentucky, March 7th, 1925.

To the Honorable Board of Tax Supervisors for Jefferson County, State of Kentucky.

GENTLEMEN: We, the undersigned, holders and owners of the number of shares of the Common Stock of the Standard Sanitary Manufacturing Company set opposite our names, respectfully object to the assessment of said stock made against us for the purposes of State and County taxes as of the 1st day of July, 1924, for said taxes for the year 1925, and request you to review said assessments and to [fol. 21] reduce same to a fair cash value, which we submit was the value of same as shown by the books of said company on the 1st day of July, 1924.

Our objections to said assessments as made by the County Tax Commission of Jefferson County at $95.00 per share are several, viz:

1st. The assessment was made and based on a speculative valuation and not on the actual fair cash value as provided for by law in such cases made and provided for.

2nd. That the said County Tax Commission in arriving at his valuation, relied entirely on hearsay evidence as shown by certain newspaper reports of sales of said stock and not on the actual fair cash value of same as of the 1st day of July, 1924

3rd. That, in fact, there was no sale of said stock had or made on the 1st day of July 1924, and none shown to have been so made by the said newspaper reports and that the County Tax Commission averaged up the sales of said stock as reported by said papers in the week before and the week after the 1st day of July, 1924, without notice to or consulting us in the matter. All this being contrary to the provisions of the law, in such cases made and provided.

4th. That the said average was obtained by the County Tax Commission from alleged reported sale of small numbers of shares, averaging about ten (10) shares per sale, which we submit is not fair or equitable to the holders of large blocks of said stock.

[fol. 22] 5th. That the real and actual assets back of and representing the said Common Stock of said Standard Sanitary Manufacturing Company as shown by its books and by the annual report of Theo. Ahrens, President of said Company, published, for the year 1924, was not in excess of the sum of $40,000,000.00, whereas the assessment of said stock at a value of $95.00 per share means that the said assets amount to the sum of $90,000,000.00, being over twice its actual fair cash value. That the said stock should not be assessed at any valuation over its said book value which was $41.93 per share on the 31st day of December 1924, and $36.29 per share on the 31st day of December, 1923, or an average of $38.61 per share on the 1st day of July, 1924. The par value of that stock being $25.00 per share.

6th. That more than one-half of the Common Stock issued by said Standard Sanitary Manufacturing Company and outstanding on the 1st day of July, 1924, was held and owned by citizens of this State of Kentucky and at same time, at least one-third of the total assets of said company were located in this State of Kentucky and duly assessed against said Company for the purposes of State and County taxes, all of which have always been and always will be paid by said Company. That by virtue of this state of facts the assessment herein complained of is double taxation and contrary to the Constitution of the State of Kentucky and therefore unconstitutional as the [fol. 23] owners and holders of said stock are the true and real owners of all of the assets of the Company.

Name	No. of shares
Charles P. Robinson	.....
John S. Pope	.....
Henry R. Grant	.....
Hattie S. Truman	.....

The board of County Tax Supervisors after fully considering the above communications and examining all other evidence offered with a full membership present, sustained the assessment of the County Tax Commissioner in the assessment of Standard Sanitary Company Stock.

I, Fred O. Nuetzel, Clerk of the Jefferson County Court, Kentucky, and Clerk of the Jefferson County Board of Tax Supervisors for 1921 do hereby certify that the foregoing is truly, completely and correctly copied from original records in my office of which I am the custodian as such Clerk.

Witness my hand this March 31st, 1925.

Fred O. Neutzel, Clerk Jefferson County Court, Kentucky.

[fols. 24 & 25] Summons and sheriff's returns omitted in printing.

[fol. 26] In Quarterly Court of Jefferson County

[Title omitted]

Amended of Supplemental Statement of Appeal—Filed Oct. 14, 1925; in Circuit Court Dec. 4, 1925

Appellant, Junius C. Klein, appeals from so much of an order of the Jefferson County Board of Tax Supervisors, entered on its records on the 12th day of March, 1925, as sustains the assessment of 4591 shares of the Common Stock of the Standard Sanitary Manufacturing Company, held and owned by him on the 1st day of July, 1924, at the rate of $95.00 per share, had and made by the Jefferson County Tax Commissioner for the purpose of 1925 State Taxes.

Appellant makes the certified copy of said order filed herein with the Judge of the Quarterly Court a part hereof as Exhibit "A".

[fol. 27] That the appellees, R. M. Martin, John Kellar, E. W. Elliott, Ed. Plenge, William C. Fischer, John D. Moore, Walter F. Jacobs, and George H. Hinesley, are the duly appointed, qualified and acting Board of Tax Supervisors in and for Jefferson County, State of Kentucky, for the year 1925 and were in session from March 27th, 1925, until April 28th, 1925, at which time they adjourned sine die.

That appellant prosecutes this appeal from said action of said Board of Supervisors for himself and for the benefit of all other holders and owners of any of said Common Stock of said Standard Sanitary Manufacturing Company, all of which were assessed by said County Tax Commissioner for 1925 State Taxes at a valuation of $95.00 per share on their said respective holdings, which valuation is greatly in excess of its fair cash value, estimated at what it would bring at a fair voluntary sale, as of the 1st day of July, 1925, and that the valuation of same should not in any event exceed $39.11 per share for the Common Stock, which was the actual value of said stock as of the 1st day of July, 1924, as shown by the books of said company.

That the question of the valuation of said Common Stock for taxation purposes involves a common and general interest of many persons (to-wit: 1028) and the holders and owners of said stock are numerous and that it is impracticable to bring all of them before the court within a reasonable time.

[fol. 28] That appellant duly appeared before the said Board of Tax Supervisors, in person and by counsel on the 12th day of March, 1925, and filed his objections to said assessment in writing and asked to be allowed to introduce proof to sustain his said objections at that time or at such other time as the said Board should fix, all of which said Board refused to grant, but arbitrarily and without hearing any proof and over the objection of the appellant, sustained the assessment as had and made by the Jefferson County Tax Commissioner, at $95.00 per share.

Appellant further says that the assessment complained of herein is contrary to the provisions of the Constitutions both of this State of Kentucky and that of the United States in relation to the valuation of properties for taxation purposes, in that the said Common Stock of said Standard Sanitary Manufacturing Company was not assessed on a uniform or equal basis with other properties in said Jefferson County and State of Kentucky and therefore amounts to the taking of property from the holders of said stock without due process of law, and a withholding from them of an equal protection of the law of the land

and that the assessments complained of herein is double taxation and therefore null and void.

Appellant further says that the specific objections to said assessment complained of herein are as follows:

1st. That three-fourths of the total properties of the Standard Sanitary Manufacturing Company are located [fol. 29] outside of the State of Kentucky and are assessed and have a situs for taxation purposes in the various States of the United States outside of the State of Kentucky and taxes are paid thereon to said various states and are under the provisions of the laws of this state not taxable in this State of Kentucky.

That the value of the Common Stock of said Company depends entirely upon the assets of said company located outside of this State of Kentucky as well as that in this state and as three-fourths of these assets are non-taxable in this state, said Common Stock cannot be taxed on this three-fourths of its value and the assessment to that extent is null and void.

That the other one-fourth of its value also cannot be taxed as that part of its value is already taxed in the assessment against the Standard Sanitary Manufacturing Company in this State for 1925 State taxes. If this is done it would be manifestly double taxation as to that one-fourth, which is not authorized by our Constitution or Statutes in such cases made and provided for, for taxation of property; and would be in violation of the Fourteenth Amendment of the Constitution of the Federal Government. That the assessment therefore of said one-fourth of the value of said stock is also null and void.

2nd. That by virtue of Section 4088 of the Kentucky Statutes the State of Kentucky recognizes that holders of [fol. 30] shares of stock are entitled to and should be given some exemption from taxation for State taxes, at least to the extent of one-fourth of its fair cash value, depending for dull exemption, where the Company has assets in the State amounting to seventy-five per cent of its total assets, thereby recognizing that to legislate otherwise, would be double taxation or at least an unequal taxation.

That by failure to make any provision for cases where less than seventy-five per cent of the assets of the company

are located in the State, for a proportionate relief or exemption to stockholders on the same basis, the said statute becomes unequal and unjust and discriminatory and taking of property from stockholders without due process of law, in all cases where such assets of the Company in the State are less than seventy-five per cent of the total assets; all of which is contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States, which guarantees the equal protection of the laws to all persons.

3rd. Appellant further states that the Standard Sanitary Manufacturing Company has very large holdings of assets and properties in this State of Kentucky, all of which have been duly assessed in years past and for the year 1925 for taxation purposes and the taxes paid thereon as they became due and that the assessment herein complained of does not make any allowance for such assessment against the Standard Sanitary Manufacturing Company to lower [fol. 31] the valuation assessed against the stock of holders.

That the holders of Common Stock of said Standard Sanitary Manufacturing Company should at least be credited with the value assessed against the Company itself and thus reduce their assessed value therein materially; otherwise their assessment herein becomes double taxation to that extent, which is not uniform and contrary to law.

4th. That by sections 171 and 174 of the Constitution of Kentucky, all taxes are required to be "uniform upon all property of the same class" and "in proportion to its value."

That it is a well-known and recognized fact that real estate in the County of Jefferson and in the State of Kentucky is not and has not been assessed at its full value for taxation purposes as is shown by the tabulated statements required to be made by the County Clerks of the various Counties of the State showing the relation of assessments to actual sales of real estate during the year prior to July 1st, 1924, all of which statements are now in the possession of the State Tax Commissioner, which show real estate generally to have been assessed at from sixty to eighty per cent of its fair cash value estimated at actual sales had and made; and that therefore the assessment complained of

herein is far above that had of real estate in Jefferson [fol. 32] County and the State by at least twenty-five per cent, whereas the assessment complained of herein is over two hundred per cent of its fair cash value as shown by the books of the Company.

That in no event however has any real estate or other property been assessed for taxation in this County of Jefferson at its speculative value, due to favorable location in relation to the natural trend of business especially in and around the City of Louisville, or due to the necessity of purchasers, who often are compelled to pay exorbitant prices for land to round out their holdings.

5th. That the value of stocks in general of corporations, depend entirely on the properties or assets of company behind them and that the true and actual fair cash value of said stock should not and cannot be any sum in excess of the actual value of all of the assets and properties of the Standard Sanitary Manufacturing Company on the 1st day of July, 1924, as shown by the books of said Company, all of which appears in the annual report of the President of the Company for the year 1924 to be not in excess of the sum of $40,000,000.00, whereas the assessment complained of herein at $95.00 per share on the Common Stock fixes the assets and properties at the sum of over $90,000,- [fol. 33] 000.00, which is over twice the true value of said Common Stock.

That the book value of said Common Stock on the 31st day of December, 1923, was $36.29 per share, on the 31st day of December, 1924, of the value of $41.93, which by averaging as of the 1st day of July, 1924, fixes it at $39.11 per share. The par value of said stock is $25.00 per share.

6th. That by section 4052 Kentucky Statutes all property subject to taxation was required to be valued as of the 1st day of July of the year previous to the year for which taxes were to be raised. That there was no sale of said Common Stock had or made on the 1st day of July, 1924.

7th. That said assessment of said Common Stock was based on a speculative and fictitious value and not on the actual fair cash value as provided by law, due largely to rumors at the time, of a prospective stock dividend of 40% being declared and paid on said Common Stock in addition

to the regular cash dividend during the fall of 1924, which stock dividend in fact did not materalize during the year 1924.

8th. That of the holders of Common Stock of the Standard Sanitary Manufacturing Company, 1028 are residents of the State of Kentucky, ninety per cent at least of whom are residents of Jefferson County and the number of shares [fol. 34] of said Common Stock held by them is 202,083 as of the 1st day of July, 1924.

That the total number of shares of Common Stock issued and outstanding of said Company as of the 1st day of July, 1924, is 805,106 shares.

That the total number of shares of Preferred Stock of said Company issued and outstanding as of the 1st day of July, 1924, is 46,657 shares and the number of said date.

That the stockholders residing in Kentucky therefore hold and own approximately twenty-five per cent of said Common Stock and thirty-three per cent of said Preferred Stock.

That in addition to the assessment against the Standard Sanitary Manufacturing Company of its real estate and tangible property in the State of Kentucky for 1925 State, County and City taxes, the said Standard Sanitary Manufacturing Company pays a yearly franchise tax to the State of Kentucky for the privilege of doing business in the State and has complied with all obligations imposed upon it by the laws of this State in relation to taxation of its assets in this State of Kentucky.

Wherefore appellant prays judgment against the appellees, Jefferson County Board of Tax Supervisors, R. M. Martin, John Kellar, E. W. Elliott, Ed. Plenge, William C. Fischer, John D. Moore, Walter F. Jacobs and George H. Hinesley, holding and adjudging the assessment of the [fol. 35] Common Stock of the Standard Sanitary Manufacturing Company, held and owned by appellant and by all other residents of this State of Kentucky, by the Jefferson County Tax Commissioner and upheld by the said Jefferson County Board of Tax Supervisors, to be null and void and of no effect and illegal and that the same be stricken from the assessment rolls and that all tax bills against said holdings of said stock be held null and void.

Appellant further prays, in case this court shall not hold said assessment wholly null and void, that the said common stock hold and owned by appellant and other residents of the State be assessed at a valuation, not to exceed the book value of same, shown by the books of the Company to be $38.11 per share and holding same to be the fair cash value of said stock, and that said owners of said stock be allowed a further reduction on said valuation of at least 25%, to equalize said stock assessments with assessments of real estate in this Jefferson County and in the State of Kentucky, holding said real estate not to have been assessed at over 75% of its fair cash value for 1925 state taxes, and that a further reduction of said valuation be allowed in the amount of the assessment had and made against the said Standard Sanitary Manufacturing Company for 1925 State taxes of $2,263,390.00, to be applied to the reduction of the assessed valuation of said stock in proportion to said respective holdings, of those stock-[fol. 36] holders who are citizens and residents of this State of Kentucky.

Appellant further prays that Section 4088 of Kentucky Statutes be held and declared to be unconstitutional and of no effect and in conflict with and contrary to the provisions of section one of the Fourteenth Amendment of the Constitution of the United States and of the Constitution of the State of Kentucky.

And he prays for such other relief to which he and others similarly situated, may appear to be entitled and he prays as originally.

Junius C. Klein, Haswell & Lukins, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 37] In Quarterly Court of Jefferson County

[Title omitted]

Judgment—Nov. 5, 1925; filed in Circuit Court Dec. 4, 1925

This cause coming on for hearing came the appellant and tendered and moved to file an amended or supplemental

statement on appeal, and the Court being advised, sustained his motion and ordered the amended or supplemental statement of appeal so tendered, filed which is now done.

And this action being submitted upon the pleadings and exhibits, it is ordered and adjudged by the Court, that the action of the Jefferson County Board of Tax Supervisors in fixing and assessing for taxation for State purposes for the year 1925 of the common stock of the Standard Sanitary Manufacturing Company held and owned by the appellant and all other holders and owners of such stock residing in Jefferson County, Kentucky, at a valuation of $95.00 [fol. 38] per share be and the same is hereby sustained; and it is further ordered and adjudged by the Court that said valuation at $95.00 per share of the Common stock of the said Standard Sanitary Manufacturing Company is its fair cash value estimated at the price it would bring at a fair and voluntary sale thereof as of the first day of July, 1924.

It is further ordered and adjudged by the Court that the appeal be and the same is hereby dismissed, to all of which appellant and all other holders and owners of said common stock who reside in Jefferson County, Kentucky, object and except and pray an appeal to the Jefferson Circuit Court, which is hereby granted.

Enter.

Nov. 5/25.

Tincher, Judge.

O. K. Wm. F. Clarke, Jr., Asst. Co. Atty. Nov. 3, 1925.

IN CIRCUIT COURT OF JEFFERSON COUNTY

MINUTE ENTRY OF SUBMISSION

At a Court held on the 26th day of June, 1926.

[fol. 39] This action was set at rules by plaintiff on the 21st inst.

Came the defendant, by counsel, and moved the Court to transfer this action to an equity division of this Court.

It is ordered by the Court that this action be, and it is submitted on motion to transfer to the equity branch of this Court.

In Circuit Court of Jefferson County, Common Pleas Branch, Third Division

Junius C. Klein, Plaintiff,

vs.

Jefferson County Board of Tax Supervisors, etc., Defendants

Motion to Transfer—Filed June 26, 1926

Come the defendants by counsel and move the Court to transfer the above styled case to an Equity Division of this Court.

T. M. Galphin, Jr., Counsel for Defendants.

[fol. 40] In Circuit Court of Jefferson County

Minute Entry of Submission

At a Court held on the 9th day of October, 1926.

This action was set at rules by the plaintiff on the 4th inst.

Came the defendants by counsel and filed a demurrer to the amended and supplemental statement of appeal herein.

It is ordered by the Court that this action be, and is, submitted on demurrer.

In Circuit Court of Jefferson County

[Title omitted]

General Demurrer—Filed Oct. 9, 1926

The appellees herein demur to the appellant's Amended or Supplemental Statement on Appeal for the reason that

the same does not state facts sufficient to constitute a cause of action against the appellees.

T. M. Galphin, Jr., Counsel for Appellees.

[fol. 41] In Circuit Court of Jefferson County

Minute Entry of Assignment

At a Court held on the 29th day of January, 1927.

This action was set at rules by defendants on the 24th inst.

Came the defendants by counsel and moved the Court in writing filed, to set aside the filing and submitting of the general demurrer filed herein on the 9th day of October, 1926, and moved the Court to require the plaintiff herein to paragraph the separate causes of action alleged in his amended or supplemental statement on appeal and to re-file the general demurrer herein on the 9th day of October, 1926.

It is ordered that this action be and it is assigned to February 4th, 1927, for a hearing on said motions.

In Circuit Court of Jefferson County

[Title omitted]

[fol. 42] Motion to Set Aside Submission of Demurrer, etc.—Filed Jan. 29, 1927

Comes the defendants by counsel and move the Court to set aside the filing and submitting of the general demurrer filed herein on the 9th day of October, 1926, and move the Court to require the plaintiff herein to paragraph the separate causes of action alleged in his amended or supplemental statement on appeal and to re-file the general demurrer filed herein on the 9th day of October, 1926.

J. Matt Chilton, T. M. Galphin, Jr., Counsel for Defendants.

IN CIRCUIT COURT OF JEFFERSON COUNTY

ORDER REASSIGNING CAUSE—Feb. 4, 1927

By agreement of the parties hereto, by counsel, it is ordered that the above styled action be and it is reassigned to February 10th, 1927, for hearing.

IN CIRCUIT COURT OF JEFFERSON COUNTY

MINUTE ENTRY OF SUBMISSION

At a Court held on the 10th day of February, 1927.

Came the appellant, by counsel, and filed a reformed, amended, supplemental statement of appeal herein.

[fol. 43] Came the defendant by counsel, and filed a demurrer as to the whole and to the 1st, 2nd and 3rd paragraphs of the reformed amended, supplemental statement of appeal herein.

It is ordered that this action be and it is submitted on said demurrer.

IN CIRCUIT COURT OF JEFFERSON COUNTY

[Title omitted]

REFORMED AMENDED SUPPLEMENTAL STATEMENT OF APPEAL—Filed Feb. 10, 1927

[fol. 44] The appellant, Junius C. Klein, for himself as the owner and holder of four thousand five hundred and ninety-one shares of the common stock of the Standard Sanitary Manufacturing Company, and on behalf of all other stockholders of the said Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, appeals from the judgment or ruling of the Jefferson County Board of Tax Supervisors entered on its records on the 12th day of March, 1925, assessing for the purpose of State Taxation for the year 1925, the common stock owned and held in the said Standard Sanitary Manufacturing Company, amounting to 202,083 shares, by the said Junius C. Klein, and all other stockholders residing in Jef-

ferson County, State of Kentucky, respectively, on the 1st day of July, 1924, at a valuation of $95.00 per share, over the written objection and complaint made before said Board of Tax Supervisors duly filed with said Board on the 12th day of March, 1925, a certified copy of which judgment or ruling was duly filed with the Judge of the Quarterly Court of Jefferson County on the — day of — 1925; which was within thirty days after the adjournment of said Board of Tax Supervisors and which is on file in this action as Exhibit "A."

That the appellees, R. M. Martin, John Keller, E. W. Elliott, Ed. Plenge, William C. Fischer, John D. Moore, [fol. 45] Walter F. Jacobs and George H. Hinesley, are the duly appointed qualified and acting Board of Tax Supervisors in and for Jefferson County, State of Kentucky, for the year 1925, and were in session as such board from March 27th, 1925, until April 29th, 1925, for the purpose of hearing complaints of taxpayers against assessments had and made by the Jefferson County Tax Commissioner for purposes of State taxes for year of 1925;

That the question of the valuation of said common stock of said Standard Sanitary Manufacturing Company for state taxation purposes involves a common and general interest of many persons, viz., 1,028 in number, all of whom are residents of Jefferson County, State of Kentucky, and the said owners and holders of said stock are numerous and that it is impracticable to bring all of them before the Court within a reasonable time;

That the Standard Sanitary Manufacturing Company is a corporation duly incorporated under and by virtue of the laws of the State of New Jersey, and was on the 1st day of July, 1924, doing business in the State of Kentucky, and was duly assessed by the Jefferson County Tax Assessor with real estate and tangible personalty owned and held by it, on the 1st day of July, 1924, in the State of Kentucky, in the prosecution of its business, at the sum of $2,263,390.00, on which said company has not only paid the state taxes for said year of 1925, but has also paid the [fol. 46] City of Louisville and County of Jefferson taxes for the same year; that said company duly paid its franchise tax for the said year of 1925, as required by law, and has complied with all provisions of the law required of for-

eign corporations to do business in the State of Kentucky;

That appellant, Junius C. Klein, for himself and on behalf of all the other stockholders aforesaid, appeared before the said Board of Tax Supervisors, in person, and by counsel, on the 12th day of March, 1925, and filed his objections to said assessments in writing, and asked to be allowed to introduce proof to sustain his said objections at that time, or at such other times as the said Board should fix, all of which said Board refused to grant, but arbitrarily, and without hearing any proof, and over the objection of the appellants, sustained the assessments as had and made by the Jefferson County Tax Commissioner of said shares of stock in the Standard Sanitary Manufacturing Company at the valuation of $95.00 per share.

A certified copy of said order is filed herein with the Judge of the Quarterly Court of Jefferson County, and is made a part hereof, and marked Exhibit "A" for identification.

The appellant for himself and for all other stockholders above referred to, further says that the assessment of said [fol. 47] shares of stock as aforesaid is illegal, null and void, and contrary to the provisions of the Constitution of the State of Kentucky Section 172, which reads as follows:

"All property * * * shall be assessed for taxation at its fair cash value estimated at what it would bring at a fair voluntary sale, * * *"

and is contrary also to the Fourteenth Amendment, Section 1, of the Federal Constitution, which reads as follows:

"Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The appellant further says that Section 4088 of the Kentucky Statutes under the provision of which the assessments complained of herein were had and made, is unconstitutional, and contrary to Section 172 of the Constitution of the State of Kentucky, and is also contrary to Section 171 of said Constitution, in that same is not uniform in its application to the assessment of shares of stock of the same class, and is a discrimination in favor of holders of shares

of stock in corporations having seventy-five per cent (75%) of their assets in the State of Kentucky, and a discrimina-
[fol. 48] tion against such as hold stock in corporations having less than 75% of their assets in this state.

Paragraph Two—Double Taxation

The appellant, Junius C. Klein, for himself, and for all other stockholders in the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, further says that the assessments complained of herein and the assessments had and made against the said company of its real estate and personalty in this state is a double taxation, and is contrary to the scheme of taxation adopted by the State of Kentucky as held by the Court of Appeals in the case of the Commonwealth vs. Walsh, 117 S. W. 398; opinion by Judge O'Rear:

"Throughout the whole scheme of taxation adopted by the State there is an evident purpose to avoid double taxation and not alone in not taxing the same property twice in the same year for the same purpose, but as well in not taxing the same thing *whatever its form*, twice in the same year for the same purpose. Double taxation is recognized as oppressive and when it is imposed upon the same class of property and not upon others, works an inequality that is *fundamentally vicious.*"

[fol. 49] "While the constitution requires that all property shall be taxed and the General Assembly is prohibited from exempting any property from taxation not specifically exempted by Section 170 of the Constitution, it is not required that every phase of property shall be taxed. *Nor is it. Nor has it ever been done.* Property is the right to or interest in a thing. *A life tenant* owns property in land; so does the remainderman; so does the reversioner; so does the tenant for a term of years; yet there is but the *one thing.*

"A Corporation owns land; all of its capital is invested in the land. The corporation owns its capital stock. The shareholders own each then their share of the capital stock. Each is property. Yet there is *but one thing.* When the thing itself is taxed at its full value every element of it is made to bear the tax. The whole includes all of its parts.

When the State lays a tax upon the whole it has made all of its constituent parts contribute to the upkeep of the government."

That three-fourths of the total properties of the Standard Sanitary Manufacturing Company consisting of Real Estate and tangible personal property is located outside of the State of Kentucky and is assessed and has a situs for taxation purposes in the various states of the United States outside of the State of Kentucky, and taxes actually paid thereon to said various states and is under the provisions [fol. 50] of the laws of this State, not taxable in the State of Kentucky for any purpose whatsoever.

That the value of the common stock of said company depends entirely upon both the assets of the company located outside of the State of Kentucky, as well as that in this State and as three-fourths of their assets are non-taxable in this State, said Common Stock cannot be taxes on this three-fourths of its value and the assessment complained of herein to that extent is null and void.

That the other one-fourth of the total assets of the company are located in the State of Kentucky and were duly assessed by the Jefferson County Tax Commissioner as of the 1st day of July, 1924, for the purpose — State, County and City of Louisville taxes at a valuation of $2,263,390.00, and all such taxes have been duly paid together with a yearly franchise tax to the State of Kentucky for the privileges of doing business in this State, and that said company has complied with all obligations imposed upon it by the laws of this State in relation to taxation of its assets in this State.

That by virtue of the assessment against the said company, and the payment of its State taxes thereon for the year 1925, the assessment herein complained of against appellant and all the other stockholders of the shares of stock held by them, is double taxation and is null and void.

[fol. 51] Paragraph Three—Excessive Valuation

The appellant, Junius C. Klein, for himself and for all the other stockholders aforesaid in the Standard Sanitary Manufacturing Company, further says that the assessments herein complained of are greatly in excess of the fair

cash value of the said shares of stock estimated at what they would bring at a fair voluntary sale, as of the 1st day of July, 1924.

1. That the valuation of said stock should not in any event exceed $39.11 per share, which was the actual book value of said stock as of the 1st day of July, 1924.

That the valuation fixed by the asesssments as made in $95.00 per share; that the par value of said stock is $25.00 per share.

2. That there as no sale had or made of any of said common stock of said company on the 1st day of July, 1924, and in order to fix the valuation of s-id stock at $95.00 per shate, the Tax Commissioner of Jefferson County, averaged sales of said stock as reported by the Louisville papers as being made in the week before and the week after the said first day of July, 1924, which method is unfair and not as provided by law.

3. That said assessments of said Common Stock was based on a speculative and fictitious value due largely to rumors current at and before the 1st day of July, 1924, in the stock exchanges of both Louisville, Kentucky, and Pitts-
[fol. 52] burgh, Pennsylvania, in which said stock was listed on the exchanges that a prospective stock dividend of 40% would be declared and paid on said common stock in addition to the regular cash dividend during the fall of 1924, which stock dividend did not in fact materialize either in whole or in part during the year of 1924.

4. That the total number of shares of Common Stock issued and outstanding of said Standard Sanitary Manufacturing Company as of the 1st day of July, 1924, is 805,106 shares of which the appellant and stockholders residing in Jefferson County, hold 202,083 shares.

That the total number of shares of Preferred Stock of the company issued and outstanding on said date is 46,657 shares of which the appellant and other Kentucky shareholders hold 16,680 shares.

That the stockholders residing in Kentucky, therefore hold and own approximately twenty-five per cent (25%) of said Common stock and thirty-three per cent (33%) of said Preferred Stock.

That by Section- 171 and 174 of the constitution of Kentucky, all taxes are required to be "uniform upon all property of the same class" and "in proportion to its value."

That it is a well known and recognized fact that real estate in the County of Jefferson and State of Kentucky is not and has not been assessed at its full value for taxation purposes as is shown by the tabulated statements required to be made by the County Clerks of the various [fol. 53] counties of the State of Kentucky, showing the relation of assessments to ordered sales of real estate during the year prior to July 1st, 1924, all of which statements are now in the possession of the State Tax Commissioner which show real estate generally to have been assessed at from sixty to eighty per cent of its fair cash value estimated at actual sales had and made, and that therefore the assessment complained of herein is far above that had of real estate in Jefferson County, and in the State of Kentucky, by at least twenty-five per cent, whereas the assessment complained of herein is over two-hundred per cent of its fair cash value as shown by the books of the company as of the 1st day of July, 1924.

That is no event however has any real estate been assessed for taxation in the County of Jefferson at its speculative value, due to the favorable location in relation to the natural trend of business especially in and around the City of Louisville, or due to the necessity of purchasers, who often are compelled to pay ex*hor*itant prices for land to round out their holdings, whereas the assessment herein complained of was had and made on hearsay data furnished by the papers of Louisville as to the market or speculative value of stock on the exchanges, all of which is contrary to the constitution requiring values to be the fair cash value estimated by what it would bring at a fair voluntary sale. [fol. 54] That the valuation of said stock at $95.00 per share fixes the assets of the Standard Sanitary Manufacturing Company at a sum in excess of $90,000,000.00 which is nearly three times the book value of said stock.

Wherefore appellant prays judgment against the appellees, Jefferson County Board of Tax Supervisors, R. M. Martin, John Kellar, E. W. Elliott, Ed. Plenge, William C. Fischer, John D. Moore, Walter F. Jacobs and George

H. Hinesley, holding and adjudging the assessment of the Common Stock of the Standard Sanitary Manufacturing Company, held and owned by appellant and by all other residents of this State of Kentucky had and made by the Jefferson County Tax Commissioner and upheld by the said Jefferson County Board of Tax Supervisors, to be null and void and of no effect and illegal and that the same be stricken from the assessment rolls and that all tax bills against said holders of said stock be hale null and void.

Appellant further prays, in case this Court shall not hold said assessment wholly null and void that the said Common Stock held and owed by appellant and other residents of the State be assessed at a valuation, not to exceed the book value of same, shown by the books of the Company to be $49.11 per share and holding same to be the fair cash value of said stock, and that said owners of said stock be allowed a further reduction on said valuation of at least 25% to equalize said stock assessments with assess-
[fol. 55] ments of real estate in this Jefferson County and State of Kentucky, holding said real estate not to have been assessed at over 75% of its fair cash value for 1925 state taxes, and that a further reduction of said valuation be allowed in the amount of the assessment had and made against the said Standard Sanitary Manufacturing Company for 1925 State Taxes of $2,263,390.00 to be applied to said stock in proportion to said respective holdings.

Appellant further prays that section 4088 of Kentucky Statutes be held and declared to be unconstitutional and of no effect and in conflict with and contrary to the provisions of section one of the Fourteenth Amendment of the Constitution of the United States, and to the constitution of the State of Kentucky, and he prays for such other relief to which he and others similarly situated may appear to be entitled, and he prays as originally.

John P. Haswell, Attorney for Appellant.

[fol. 56] IN CIRCUIT COURT OF JEFFERSON COUNTY

[Title omitted]

GENERAL DEMURRER—Filed Feb. 10, 1927

Comes the defendants herein and demur to the reformed, amended, supplemental statement of appeal of the plaintiff

and to paragraphs one, two and three therein, for the reason that the said reformed, amended, supplemental statement of appeal does not nor does each of the said paragraphs, or all of them, state facts sufficient to constitute a cause of action against the defendants, or each of them herein.

J. Matt Chilton, T. M. Galphin, Jr., Counsel for Defendants.

[fol. 57] IN CIRCUIT COURT OF JEFFERSON COUNTY

[Title omitted]

DEPOSITION OF BEN MARSHALL—Filed Feb. 28, 1927

The deposition of Ben Marshall, taken by agreement at the office of the State Tax Commission, at the State Capitol, in Frankfort, Kentucky, on February 23, 1927, to be read as evidence in behalf of the plaintiff in the trial of the above styled action

The witness bring first duly sworn, deposes and says:

Examined by John P. Haswell:

Q. 1. Mr. Marshall, will you give you- full name and residence to the stenographer?

A. Ben Marshall. Residence, Frankfort, Ky. Occupation, Secretary of the State Tax Commission.

Q. 2. How long have you been continuously Secretary of the State Tax Commission?

A. Practically ten years, it lacks four or five months.

[fol. 58] Q. 3. Then you have been the Secretary of the State Tax Commission since the law was enacted creating it?

A. Yes, sir, since the first day of July, 1917.

Q. 4. As such clerk of the State Tax Commission you are the custodian of the records of the State Tax Commission, are you not?

A. I am.

Q. 5. Mr. Marshall, will you examine the records in your possession as such clerk and state what they show with reference to the assessment of real estate in the State of

Kentucky as of the first day of July, 1924, as compared with the sale value of same as shown by the lists of conveyances furnished by the respective clerks of the county courts of the respective counties of Kentucky?

A. I have made the examination, and the record is typewritten containing the amounts of land sales and the amount of lot sales for the preceding July 1, 1924, and in order to make my answer I am of the opinion that it would be necessary to file copy of these certifications, which I now do, and file the same and mark it for identification "BM #1."

Q. 6. Will you examine that list which you have just filed, and state generally what the relation is of the sale value of the lands with respect to the assessed valuation of the lands in the counties of Kentucky as a whole, and especially with respect to the County of Jefferson of the State of Kentucky.

[fol. 59] A. Without making an actual calculation, it is my opinion that the transfers made by the clerks of the date mentioned for the one hundred and twenty counties of the State, that the assessed value will average between 65 and 70 per cent of the sale value of the property transferred.

Q. 7. Will you examine this record, copy of which you have filed, and give me this information with respect to the sale values of lands in Jefferson County as compared with the assessed valuations of lands in Jefferson County, Kentucky?

A. Having examined the record it disclosed that the assessed value was 69.9 percent of the sale value in Jefferson County.

Q. 8. I will ask you, Mr. Marshall, whether or not in making this estimate you have just given you took into consideration the fact that the United States revenue stamps were required to be attached to all deeds made prior to July 1, 1924, for some years last past before said date.

A. In making the calculation to ascertain the percentage of the assessed value as compared to the sale value it was necessary in 90 per cent of the cases to use the revenue stamps as the basis of the real consideration in the transfer.

Cross-examination.

By O. S. Hogan, Assistant Attorney General:

X Q. 1. Mr. Marshall, are all holders of stock in corporations of the character and in the situation of the Standard Sanitary Manufacturing Company and other corporations [fol. 60] so situated, assessed and taxed in the same manner and upon the same basis?

A. They are, absolutely.

Re-direct examination

By John P. Haswell:

R.D.Q. 1. In the answer to the last preceding question, Mr. Marshall, you do not mean to state, do you, that the same taxing method with respect to the assessment of *teal estate it used when it comes to the assessment of* real estate is used when it comes to the assessment of such shares of stock, do you?

A. In my opinion real estate is assessed for more than 80 per cent of its value. There being no market quotations, this Commission is at a loss to find 100 per cent valuation on real estate. The valuation on Monday might be one price and by Saturday of the same week it might be advanced or depreciated more than 25 percent, for the reason that real estate is only transferred to particular individuals who want that particular peice or real estate for certain purposes, and it has a greater value to them than it does to the other 99 percent of the people in the same vicinity. Intangible personal property is required to be listed at 100 percent of its market value on the first day of July, and I believe in a great majority of cases, that which reaches the assessor's book is assessed at 100 per cent of its market value.

[fol. 61] R.D.Q. 2. You wouldn't undertake to say, would you, Mr. Marshall, that real estate is assessed in Kentucky at 100 percent of its market value as of the date it's assessed, would you?

A. No, I would not, but if I was asked if I thought the real estate would sell on the first day of July of any given year for its assessed valuation, I would be forced to answer that I think it woudl not.

R.D.Q. 3. That is to say, you are basing that question upon the sale of all of it on the same day?

A. I am basing the sales of stocks and bonds identically the same way.

R.D.Q. 4. Mr. Marshall, no entire issue of stocks and bonds of any one corporation are ever made on one day, are they?

A. No, and all the sales of real estate are not made on one day, it would be impossible.

Ben Marshall.

STATE OF KENTUCKY,
County of Franklin:

I, Mattie B. Morris, Notary Public in and for the County and State aforesaid, certify that the foregoing deposition of Ben Marshall was taken by me at the time and place stated in the caption; that said deposition was first taken in shorthand and afterwards transcribed by me, and that it was read and signed by the witness in my presence; that the plaintiff was present by attorney, John P. Haswell, and the defendant was present by the Assist-
[fol. 62] ant Attorney General, O. S. Hogan.

Witness my hand this 25th day of February, 1927.

Mattie B. Morris, Notary Public, Franklin County, Ky. My commission expires May 2, 1928. (Seal.)

The following, "Exhibit BM #1," is filed with the foregoing Deposition of Ben Marshall and made a part thereto, to-wit:

[fol. 63]

EXHIBIT "B. M. #1"

Copy

Certification of Real Estate Transfers from July 1st, 1923, to June 30th, 1924, Showing Sale Value and Assessed Value; also Showing the Percentage the Assessed Value Bears to the Sale Value of Farm Lands and Town Lots Separately

County	Land sale	Land assessed	Percentage	Town lots sale	Town lots assessed	Percentage	
1. Adair	159,192	108,884	68.4%	57,251	39,905	69.7%	
2. Allen	214,578	120,144	56. %	33,992	25,400	63.5%	
3. Anderson	283,763	164,892	58.1%	91,277	48,750	53.4%	
4. Ballard	159,359	110,348	69.2%	61,102	30,650	50.1%	
5. Barren	224,613	119,527	52.7%	239,425	129,350	54. %	
6. Bath	353,685	272,486	77. %	59,050	37,033	62.7%	
7. Bell	110,342	65,040	58.9%	328,490	158,985	48.4%	
8. Boone	382,717	284,865	74.4%	124,710	75,175	60.2%	
9. Bourbon	751,250	561,980	74.8%	438,086	235,925	52.4%	
10. Boyd	401,311	144,885	35.9%	3,729,283	1,716,902	46. %	
11. Boyle	148,963	94,445	63.4%	658,824	311,877	47. %	Eliminate 2
12. Bracken	268,839	170,525	63.4%	143,358	87,495	61.2%	transfers
13. Breathitt	133,791	60,946	45.5%	71,040	38,394	54.1%	and % is
14. Breckinridge	301,638	214,130	70.9%	123,586	74,350	60.1%	61.
15. Bullitt	209,815	144,149	68.6%	75,429	47,330	62.7%	
16. Butler	92,522	77,270	83.5%	22,000	17,475	79. %	
17. Caldwell	146,084	107,138	73.3%	206,912	125,200	60.5%	
18. Calloway	174,995	128,408	67.6%	205,680	108,335	52.6%	
19. Campbell	211,200	112,845	53.4%	6,302,127	3,212,610	50.9%	
20. Carlisle	61,342	43,682	71.1%	26,750	17,540	69.3%	
21. Carroll	183,386	119,544	65.2%	155,580	87,990	56.5%	
22. Carter	294,246	146,612	49.7%	115,409	61,630	55.5%	
23. Casey	83,906	67,490	80.4%	24,615	18,000	73.1%	
24. Christian	596,236	397,765	63.9%	645,253	351,885	54.5%	
25. Clark	382,242	283,300	74.1%	452,529	305,475	67.5%	
26. Clay	167,511	101,011	60.3%	32,071	18,500	57.6%	
27. Clinton	89,292	53,635	60.1%	7,520	4,335	57.6%	

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EXHIBIT "B. M. 21"—Continued

County	Land sale	Land assessed	Per-centage	Town lots sale	Town lots assessed	Per-centage
28. Crittenden	294,181	194,625	65.1%	155,543	100,348	64.5%
29. Cumberland	47,970	28,150	58.6%	19,430	10,650	54.8%
30. Daviess	662,244	329,030	49.7%	1,278,421	574,076	44.9%
31. Edmonson	53,925	39,085	72.4%	1,475	1,225	83.0%
32. Elliott	62,755	42,147	67.1%	3,800	2,300	60.5%
33. Estill	500,414	224,930	44.9%	615,148	295,675	47.7%
34. Fayette	924,492	536,229	58.0%	3,665,146	1,973,271	53.8%
35. Fleming	895,212	288,176	72.9%	69,045	45,610	66.1%
36. Floyd	145,191	95,200	65.5%	197,466	107,555	54.5%
37. Franklin	460,473	272,971	59.3%	369,112	196,345	53.2%
[fol. 64]						
38. Fulton	183,829	121,245	65.9%	195,547	131,235	67.7%
39. Gallatin	121,290	72,935	60.1%	51,931	30,075	57.9%
40. Garrard	551,949	403,093	73.0%	67,070	48,045	71.6%
41. Grant	295,189	209,979	70.0%	127,009	79,620	62.7%
42. Graves	494,624	359,845	72.8%	319,435	191,075	59.8%
43. Grayson	105,293	67,900	64.3%	35,325	21,015	60.0%
44. Green	123,929	696,800	56.2%	24,115	12,015	53.7%
45. Greenup	625,748	12,900	50.0%	209,895	83,050	39.9%
46. Hancock	51,211	40,049	78.2%	44,977	29,725	66.1%
47. Hardin	86,728	62,980	72.6%	59,325	32,240	54.3%
48. Harlan	114,667	38,993	34.0%	647,170	323,583	50.0%
49. Harrison	432,502	299,156	69.1%	195,282	122,575	62.7%
50. Hart	260,428	143,760	55.2%	42,625	25,425	59.6%
51. Henderson	354,250	239,267	67.5%	803,330	398,183	49.5%
52. Henry	344,965	208,098	60.3%	152,970	92,300	60.3%
53. Hickman	94,759	65,896	69.5%	18,967	15,795	82.2%
54. Hopkins	115,256	61,755	53.5%	316,680	167,235	52.9%
55. Jackson	31,845	21,890	68.9%	6,401	3,800	59.9%
56. Jessamine	235,796	180,071	71.2%	266,727	121,173	45.4%

57. Jefferson	4,280,342	2,999,995	69.9%	38,883,550	23,519,347	60.4%	
58. Johnson	114,916	66,650	58.0%	135,362	75,650	56.0%	
59. Kenton	132,152	74,800	56.5%	8,456,709	4,834,070	57.1%	
60. Knott	177,942	103,659	58.2%	No lots transferred			
61. Knox	72,851	59,024	81.0%	79,750	46,975	58.9%	
62. Larue	177,481	110,422	62.2%	67,888	43,816	64.5%	
63. Laurel	71,756	49,253	68.6%	38,570	21,390	55.4%	
64. Lawrence	71,485	38,079	53.2%	192,570	108,125	56.1%	
65. Lee	76,584	41,082	53.4%	26,200	16,950	64.6%	
66. Leslie	40,949	25,060	61.2%	No lots transferred			
67. Letcher	100,777	48,496	48.1%	101,126	54,445	53.8%	
68. Lewis	240,661	162,600	67.5%	74,592	48,575	65.1%	
69. Lincoln	735,851	318,342	43.2%	115,716	75,570	65.3%	Eliminate 2 transfers and % is 65.6.
70. Livingston	28,243	14,159	50.1%	7,050	2,600	37.0%	
71. Logan	423,347	305,428	72.1%	115,783	78,550	68.0%	
72. Lyon	82,353	51,766	62.8%	59,999	28,080	46.8%	
73. Madison	473,969	325,720	69.1%	434,193	268,970	61.9%	
74. Magoffin	144,225	66,055	45.8%	21,000	9,100	43.3%	
75. Marion	237,050	176,640	74.5%	108,506	68,465	63.1%	
76. Marshall	66,016	43,950	61.2%	14,908	9,005	60.4%	
77. Martin	67,948	30,884	45.4%	14,555	6,260	42.3%	
78. Mason	258,070	203,656	78.9%	388,050	245,710	63.3%	
[fol. 65]							
79. McCracken	356,979	219,485	61.4%	1,561,178	806,305	51.6%	
80. McCreary	34,230	19,890	58.1%	24,015	15,197	63.2%	
81. McLean	177,926	93,895	52.8%	43,232	20,425	47.2%	
82. Meade	103,304	72,620	70.2%	5,175	3,800	73.4%	
83. Menifee	36,505	29,118	79.7%	2,781	2,100	75.5%	
84. Mercer	343,868	246,845	71.2%	156,118	97,551	62.5%	
85. Metcalf	113,458	66,620	58.7%	14,015	7,710	55.0%	
86. Monroe	83,073	50,044	60.2%	30,292	19,000	62.7%	
87. Montgomery	181,255	113,240	62.4%	350,707	205,130	58.5%	
88. Morgan	170,494	118,205	69.3%	15,950	10,700	67.1%	
89. Muhlenberg	104,242	49,919	46.9%	231,650	109,295	47.1%	

EXHIBIT "B. M. #1"—Continued

County	Land sale	Land assessed	Per-centage	Town lots sale	Town lots assessed	Per-centage	
90. Nelson	569,263	423,836	74.4%	168,660	113,590	67.3%	
91. Nicholas	260,243	174,170	66.9%	136,245	39,084	28.6%	Eliminate 1 transfer and % is 54.8.
92. Ohio	188,524	145,270	77.0%	72,539	56,755	78.2%	
93. Oldham	427,351	266,353	62.3%	64,825	41,790	64.5%	
94. Owen	420,810	251,104	59.6%	101,196	62,495	61.7%	
95. Owsley	42,753	19,825	46.4%	3,050	1,850	60.6%	
96. Pendleton	304,814	201,950	66.2%	137,115	66,650	48.6%	
97. Perry	95,729	43,563	45.4%	205,057	92,455	45.1%	
98. Pike	159,708	83,725	52.4%	96,389	45,330	47.1%	
99. Powell	17,950	12,710	65.2%	29,945	15,195	63.3%	
100. Pulaski	218,195	120,457	57.5%	129,606	79,260	61.1%	
101. Robertson	92,737	40,109	43.2%	32,265	9,425	29.2%	
102. Rockcastle	77,042	52,780	68.5%	46,835	29,440	62.8%	
103. Rowan	105,097	72,927	69.4%	51,275	32,150	62.7%	
104. Russell	75,620	43,985	58.1%	13,075	8,850	67.6%	
105. Scott	597,091	415,248	71.7%	302,632	198,770	65.6%	
106. Shelby	592,734	402,898	67.9%	242,555	141,682	58.4%	
107. Simpson	590,689	287,015	48.6%	279,828	165,780	59.2%	
108. Spencer	145,810	111,138	76.8%	22,350	13,900	62.1%	
109. Taylor	116,407	109,273	57.5%	279,003	55,660	20.0%	Eliminate 1 transfer and % is 50.6.
110. Todd	158,416	103,325	65.2%	38,775	23,100	59.5%	
111. Trigg	303,387	183,198	60.3%	36,120	20,575	56.9%	
112. Trimble	71,051	47,150	66.3%	4,650	2,375	51.1%	
113. Union	253,568	152,244	60.9%	181,216	93,240	51.4%	
114. Warren	422,770	290,430	68.6%	546,983	331,375	60.6%	
115. Washington	270,245	157,506	58.2%	64,675	35,538	54.9%	
116. Wayne	146,645	88,295	60.2%	500	400	80.0%	
117. Webster	345,298	190,635	55.2%	358,406	227,966	60.8%	
118. Whitley	122,363	69,205	56.5%	318,667	193,770	60.8%	
119. Wolfe	62,050	40,505	65.2%	9,285	7,125	76.9%	
120. Woodford	742,895	564,634	76.0%	95,027	59,412	62.6%	

[fol. 66] IN CIRCUIT COURT OF JEFFERSON COUNTY

MINUTE ENTRY OF SUBMISSION

At a Court held on the 12th day of April, 1927.

Now come the appellant and appellees herein and tender and move to file as part of the record the agreed stipulations of facts, marked for identification "JCK No. 1" and the Court being sufficiently advised sustained said motion, and said stipulations are now filed and made part of the record with the same force and effect as if evidence had been taken herein with respect to all the matters set up in said stipulations.

It is further ordered that this case shall now stand submitted upon the general demurrers heretofore filed herein by appellees, and also upon the whole case, both as to law and facts.

[fol. 67] IN CIRCUIT COURT OF JEFFERSON COUNTY

[Title omitted]

STIPULATION AS TO FACTS—Filed April 12, 1927

It is hereby agreed by counsel for appellant and by counsel for appellees that the following stipulations of facts shall be considered as conclusive evidence of said facts at the trial of this action subject alone to competency and relevancy.

That the Standard Sanitary Manufacturing Company is a foreign corporation organized under, and by virtue of the laws of the State of New Jersey, and is duly authorized to do business in this State, and was so doing business in this State of Kentucky on the 1st day of July, 1924.

That it had issued and outstanding on the 1st day of July, 1924, 805,106 shares of Common Stock, of which Number 202,083 shares were held and owned by 1,028 persons, citizens and residents of, and domiciled in this State of Kentucky, on said 1st day of July, 1924, and all of whom have been assessed for 1925 State taxes on their respective holdings at the rate of $95.00 per share.

That the total number of preferred shares of said company issued and outstanding on said first day of July, 1924, was 46,667 shares of which number 16,680 shares are held and owned by persons, citizens and residents of the State of Kentucky

[fol. 68] That said stockholders residing in Kentucky, own and hold in round figures, Twenty-five Per Cent (25%) of the total issue of said Common Stock and Thirty-Three Per Cent (33%) of the total issue of said preferred stock.

That said Standard Sanitary Manufacturing Company, on the 1st day of July, 1924, held and owned properties and assets consisting of real estate and tangible personalty, located in Jefferson County, State of Kentucky, all of which was acquired and held by it for corporate purposes and all of which has been duly listed by said company for assessment for 1925. State, County, City of Louisville taxes and for all other purposes, and duly assessed both by the Jefferson County Board of Tax Supervisors for State taxes for the year 1925, and for all other purposes, at a total value of $2,263,390.00, which was its fair cash value estimated at the price it would bring at a fair voluntary sale, and which is over twenty-five per cent (25%) of the total assessed values of its total properties in twenty-one States of the United States of America, in which states the Standard Sanitary Manufacturing Company has its properties and assets and was doing business as of the 1st day of July, 1924; that the total assessed value of all of the said Standard Sanitary Manufacturing Company's assets and [fol. 69] properties in said twenty-two states of the United States was $8,522,822.62, as of the 1st day of July, 1924. That the other 75% of its total properties 95% of which consists of real estate and tangible personalty, is located and had a taxing situs on the 1st day of July, 1924, outside of, and beyond the limits of this State of Kentucky, all of which properties have been duly listed by the said Standard Sanitary Manufacturing Company, with the taxing authorities of every State in which its properties are located, and assessed by said taxing authorities for taxation, and for all purposes as required by the laws of said respective states or political subdivisions of same, and said Company has paid and is now paying all such taxes on same as they

become due. That the foregoing assessed values and taxes do not include any license or franchise tax or income taxes, all of which have also been duly assessed against and paid by said Standard Sanitary Manufacturing Company; that the book value of the said shares of Common Stock of the said Standard Sanitary Manufacturing Company as of the 1st day of July, 1924, was $39.11 per share, and the par value of same was $25.00 per share. That there was no sale of said common stock had or made or reported by newspapers on the 1st day of July, 1924. That said Common Stock is only listed on the stock Exchanges of the Cities of Pittsburgh, Pennsylvania and Louisville, Kentucky.

[fol. 70] That the appellant is a citizen of the State of Kentucky and resides in Louisville, Jefferson County, Kentucky, and was the owner and holder of 591 shares of the said Common Stock of the Standard Sanitary Manufacturing Company, on the 1st day of July, 1924, and duly listed said stock with the Jefferson County Tax Commissioners for taxation as of the 1st day of July, 1924, but claimed the said stock was non-assessable. That the said Jefferson County Tax Commissioner, over the protest and objection of the appellant valued said stock at the rate of $95.00 per share, which valuation was arrived at by him by averaging the sales of small blocks of stock ranging from ten to twenty shares, as reported by the stock reports published in the newspapers of the cities of Louisville and Pittsburgh, as having been made in the week prior to, and the week after the 1st day of July, 1924.

That appellant duly appeared in person, and by counsel, before the Jefferson County Board of Tax Supervisors on being notified of the action of the Jefferson County Tax Commissioner and filed with said Board his written objections and reasons therefor to the aforesaid assessment of his said common stock at $95.00 per share, for, and on behalf of himself and all other holders and owners of said stock, citizens and residents of the State of Kentucky, and who were likewise assessed with their respective holdings [fol. 71] at the same rate of $95.00 per share, on the 12th day of March, 1925, at which time said Board was duly assembled and in session for the purpose of reviewing and

correcting the assessments of persons where same were complained of.

That the appellant requested said Board to be allowed to produce proof to sustain his said objections at that time, or at such other time as said Board might fix. That said Board declined and refused said request and acted thereon as shown by the judgment or order of court herein of March 11, 1925, and sustained the assessment of said common stock as made by the Jefferson County Tax Commissioner at $95.00 per share, to all of which the appellant objected and his objection being overruled, excepted at the time and still excepts.

That during several months prior to July 1st, 1924, rumors were promulgated at the stock exchange of Louisville and Pittsburgh, and among the financial institutions of said cities, that a 40% stock dividend was expected to be declared and paid by the Standard Sanitary Manufacturing Company in the fall of 1924, in addition to the regular cash quarterly dividends theretofore paid of $1.25 per share.

That no stock dividends was declared or paid by said Standard Sanitary Manufacturing Company on its Common Stock during the year 1924; but that a stock dividend of 25% was declared and paid on February 1st, 1925, and [fol. 72] that the average market value of stock in December, 1924, was $117.00.

That in no case has real estate in this State been assessed for taxation purposes at a speculative value due either to the favorable location of same in relation to the trend of business especially in the City of Louisville, or County of Jefferson, or to the pressing need of purchasers paying exhorbitant prices for real estate to round out their holdings.

That during a period of a month prior to the 1st day of July, 1924, and a month after said date, the number of shares of said Common Stock traded in and transferred on the books of the said Standard Sanitary Manufacturing Company was less than 5% of the total issue outstanding at the time.

John P. Haswell, Matt O'Doherty, Attorney- for Plaintiff. J. Matt Chilton, T. M. Glaphin, Jr., Counsel for Defendants.

"Exhibit J. C. K. No. 1."

IN CIRCUIT COURT OF JEFFERSON COUNTY

MINUTE ENTRIES OF RESUBMISSION

At a Court held on the 2nd day of June, 1927.

Upon agreement of counsel for plaintiff and defendant, it is hereby ordered that the order of April 12th, 1927, submitting the above styled case on the demurrers herein and in chief, be set aside, and the appellees be given leave to file answer herein, and that upon the filing of said answer, which is tendered and filed herewith, that this case be re-submitted on the demurrers herein and also upon the [fol. 73] whole case, both as to law and as to facts.

IN CIRCUIT COURT OF JEFFERSON COUNTY

[Title omitted]

ANSWER—Filed June 2, 1927

Paragraph I

Comes the appellees and for their answer herein, deny that the 4,591 shares of the Common stock of the Standard Sanitary Manufacturing Company, owned by Junius C. Klein on July 1, 1924, or any of the shares in said company owned by the said Klein, or any of the other stockholders [fol. 74] at said time in said company, were illegally assessed by the Tax Commissioner of Jefferson County or by the defendants herein for State and County taxes for the year 1925; and deny that the assesment made on said shares by the said Tax Commissioner and the defendants as of July 1, 1924 for the said 1915 taxes was null and void and contrary to the provisions of Section 171 of the Constitution of the Commonwealth of Kentucky and to the 14th Amendment, Section 1 of the Federal Constitution.

Paragraph II

The defendants further deny that the sail assessment constitutes double taxation within the meaning of the Constitution of Kentucky or of the Federal Constitution; and deny that it is, therefore, null and void.

Paragraph III

The defendants further deny that the said assessments herein complained of are greatly in excess of the fair cash value of the said shares of stock estimated at what they would bring at a fair voluntary sale on July 1, 1924; and deny that it is a well known and recognized fact, and deny that it is a fact, that real estate in Jefferson County and in the State of Kentucky is not and has not been assessed at its full value for taxation purposes on July 1, 1924, for 1925 taxes.

Wherefore the appellees ask that the appellants' appeal be dismissed and for their costs herein expended and for [fol. 75] all other relief to which they may be entitled.

J. Matt Chilton, T. M. Galphin, Jr., Counsel for Appellees.

In Circuit Court of Jefferson County

Minute Entries of Reallotment, etc.

At the Court held on the 22nd day of March, 1928.

At the request of the Hon. Henry S. Barker, Judge of this division of the Court, it is ordered, that this action be, and is reallotted to one of the other Divisions of the Common Pleas Branch of this Court.

On the 22nd of March, 1928, an allotment was held by the Clerk and this action was assigned to Common Pleas Branch, First Division.

At a Court held on the 30th lay of March, 1928.

It is ordered by the Court that Harris W. Coleman, County Attorney of Jefferson County, Kentucky, be, and he is hereby given leave to withdraw the original record in this action from the office of the Clerk of the Jefferson Circuit Court for the purpose of taking same to Frankfort, [fol. 76] Kentucky, to be examined by the Attorney General of the State herein.

At a Court held on the 21st day of April, 1928.

Came plaintiff by counsel, in writing filed, and moved the Court to state in writing its conclusion of fact found separately from the conclusions of law.

The Court returned separate findings of law and facts, which is ordered to be and is filed and made a part of the record herein.

Came defendants by counsel and filed a written notice herein.

Came defendants by counsel in writing filed, and moved the Court to set aside the submission of this action for the purpose of taking additional proof, to which the plaintiff objects.

The Court being advised, ordered said motion be and it is overruled, to which the defendants except.

[fol. 77] In Circuit Court of Jefferson County

[Title omitted]

Motion to State Conclusion of Fact Separately from Conclusions of Law—Filed April 21, 1928

This action having been submitted to the Court upon the law and facts, now comes the appellant and plaintiff and moves the Court to state in writing the conclusion of fact found separately from the conclusions of law.

John P. Haswell, Matt O'Doherty, Attorneys for Appellant and Plaintiff, Junius C. Klein.

[fol. 78] In Circuit Court of Jefferson County

[Title omitted]

Separate Findings of Law and Facts—Filed April 21, 1928

This case having been submitted on the law and the facts, the pleadings, exhibits, and the stipulations filed herein, and the deposition of Ben Marshall; Now the Court being fully advised, finds the facts in the case are as shown by the said stipulations filed herein by agreement of parties, on April 12th, 1927:

Stipulations

"It is hereby agreed by counsel for appellant and by counsel for appellees that the following stipulations of facts

shall be considered as conclusive evidence of said facts at the trial of this action subject alone to competency and relevancy.

[fol. 79] That the Standard Sanitary Manufacturing Company is a foreign corporation organized under, and by virtue of the laws of the State of New Jersey, and is duly authorized to do business in this State, and was so doing business in this State of Kentucky on the 1st day of July, 1924.

That it had issued and outstanding on the 1st day of July, 1924, 805,106 shares of Common Stock, of which number 202,083 shares were held and owned by 1,028 persons, citizens and residents of, and domiciled in this State of Kentucky, on said 1st day of July, 1924, and all of whom have been assessed for 1925 State taxes on their respective holdings at the rate of $95.00 per share.

That the total number of preferred shares of said company issued and outstanding on said 1st day of July, 1924, was 46,667 shares of which number 16,680 shares are held and owned by persons citizens and residents of the State of Kentucky.

That said stockholders residing in Kentucky, own and hold in round figures, twenty-five per cent (25%) of the total issue of said Common Stock and thirty-three per cent (33%) of the total issue of said preferred stock.

That said Standard Sanitary Manufacturing Company, on the 1st day of July, 1924, held and owned properties and assets consisting of real estate and tangible personalty, [fol. 80] located in Jefferson County, State of Kentucky, all of which was acquired and held by it for corporate purposes and all of which has been fully listed by said Company for assessment for 1925, State, County, City of Louisville Taxes and for all other purposes, and duly assessed boty by the Jefferson County Board of Tax Supervisors for State taxes for the year 1925, and for all other purposes, at a total value of $2,263,390, which was its fair cash value estimated at the price it would bring at a fair voluntary sale, and which is over twenty-five per cent (25%) the total assessed value of its total properties in twenty-two states of the United States of America, in which states the Standard Sanitary Manufacturing Company has its properties and was doing business as of the 1st day of July,

1924; that the total assessed value of all of the said Standard Sanitary Manufacturing Company's assets and properties in said twenty-two "states of the United States was $8,522,822.62, as of the 1st day of July, 1924. That the other 75% of its total properties, 85% of which consists of real estate and tangible personalty, is located and has a taxing situs on the 1st day of July, 1924, outside of, and beyond the limits of this State of Kentucky, all which properties have been duly listed by the said Standard Sanitary Manufacturing Company, with the taxing authorities of every State in which its properties are located, and assessed by said taxing authorities for taxation, and for all purposes as required by the laws of said respective states or political subdivisions of same, and said Company has paid and is [fol. 81] now paying all such taxes on same as they become due. That the foregoing assessed values and taxes do not include any license or franchise tax or income taxes, all of which have also been duly assessed against and paid by said Standard Sanitary Manufacturing Company; that the book value of the said shares of Common Stock of the said Standard Sanitary Manufacturing Company as of the 1st day of July, 1924, was $39.11 per share, and the par value of same was $25.00 per share. That there was no sale of said common stock had or made or reported by newspapers on the 1st day of July, 1924. That said Common Stock is only listed on the Stock Exchanges of the cities of Pittsburg, Pennsylvania, and Louisville, Kentucky.

That the appellant is a citizen of the State of Kentucky, and resides in Louisville, Jefferson County, Kentucky, and was the owner and holder of 4,591 shares of the said Common Stock of the Standard Sanitary Manufacturing Company, on the 1st day of July, 1924, and duly listed said stock with the Jefferson County Tax Commissioners for taxation as of the 1st day of July, 1924, but claimed the said stock was non-assessable. That the said Jefferson County Tax Commissioner, over the protest and objection of the appellant valued said stock at the rate of $95.00 per share, which valuation was arrived at by him by averaging the sales of small blocks of stock ranging from ten to twenty shares, as reported "by the stock reports published in the newspapers of the cities of Louisville and Pittsburgh, as having been made in the week prior to and the week after the 1st day [fol. 82] of July, 1924."

That appellant duly appeared in person, and by counsel, before the Jefferson County Board of Tax Supervisors on being notified of the action of the Jefferson County Tax Commissioner and filed with said Board his written objections and reasons therefor to the aforesaid assessment of his said common stock at $95.00 per share, for, and on behalf of himself and all other holders and owners of said stock, citizens and residents of the State of Kentucky, and who were likewise assessed with their respective holdings at the same rate of $95.00 per share, on the 12th day of March, 1925, at which time said Board was duly assembled and in session for the purpose of reviewing and correcting the assessments of persons where same were complained of.

That appellant requested said Board to be allowed to produce proof to sustain his said objections at that time, or at such other time as said Board might fix. That said board declined and refused said request and acted thereon as shown by the judgment or order of Court herein of March 11, 1925, and sustained the assessment of said common stock as made by the Jefferson County Tax Commissioner at $95.00 per share, to all of which the appellant objected and his objection being overruled excepted at the time and still excepts.

That during several months prior to July 1st, 1924, rumors were promulgated at the stock exchange of Louis- [fol. 83] ville and Pittsburgh, and among the financial institutions of said cities, that a 40% stock dividend was expected to be declared and paid by the Standard Sanitary Manufacturing Company in the fall of 1924, in addition to the regular cash quarterly dividends therefore paid at $1.25 per share.

That no stock dividend was declared or paid by said Standard Manufacturing Company on its Common Stock during the year 1924; but that a stock dividend of 25% was declared and paid on February 1st, 1925, and that the average market value of stock in December, 1924, was $117.00.

That in no case has real estate in this state been assessed for taxation purposes at a speculative value due either to the favorable location of same in relation to the trend of business especially in the City of Louisville, or County of Jefferson, or to the pressing need of purchasers paying exorbitant prices for real estate to round out their holdings.

That during a period of a month prior to the 1st day of July, 1924, and a month after said date, the number of shares of said Common Stock traded in and transferred on the books of the said Standard Sanitary Manufacturing Company was less than 5% of the total issue outstanding at the time."

The Court further finds that the only other fact presented in the case is contained in the deposition of Ben Marshall, Secretary of the State Tax Commission of the State of Kentucky, which fact the Court finds to be that the assessment of real estate by the assessing authorities of the State of Kentucky, in the County of Jefferson, State of [fol. 84] Kentucky, for the year 1925 as of July 1, 1924, was had and made on a basis of 69.9 per cent of its fair cash value, estimated at what it would bring at a fair voluntary sale thereof, and that the ratio, or average, of the assessments for taxation of real estate in all of the counties of the State of Kentucky, for said year 1924, was between 65% and 70% of the fair cash values of same.

The Court further finds as conclusions of law based on the above facts, that the assessments had and made by the Jefferson County Tax Commissioner of the shares of stock of the Standard Sanitary Manufacturing Company held and owned by plaintiff, Junius C. Klein, and all other holders residing in Jefferson County, Kentucky, at a valuation of $95.00 per share for purposes of State taxation for the year 1925, was the full, fair cash value of same, as of the first day of July, 1924, estimated at what it would bring at a fair voluntary sale thereof; and that the assessment of said shares of stock as aforesaid *the* at the same time the Standard Sanitary Manufacturing Company was also assessed for purposes of State taxes for said year 1925, with its real estate and other property, situated in the State of Kentucky, was not double taxation;

The Court further finds that assessment complained of herein of said shares of stock for State purposes, is not null or void and is not contrary to or in violation of the Constitution of the State of Kentucky, or the Constitution of the United States of America.

[fol. 85] The Court further finds that Section 4088 of the Kentucky Statutes under which the above assessment was made, is constitutional and not in violation of the uniform and equal provisions required by the State constitution in

the assessment of properties for taxation purposes, and does not deny to the plaintiff the equal protection of the law. To each and every conclusion of law aforesaid, the appellant and all other holders and owners of said common stock who reside in Jefferson County, Kentucky, object and except.

John B. Baskin, Judge.

In Circuit Court of Jefferson County

[Title omitted]

Notice of Motion to Set Aside Submission, etc.—Filed April 21, 1928

The plaintiff, Junius C. Klein, and his attorney, Hon Matt O'Doherty, will take notice that on Saturday, April 21st, 1928, at nine A. M. or as soon thereafter as the Court [fol. 86] will hear him, the defendant will move the Hon. Judge Baskin to—

1. Set aside the submission of this case;

2. That defendant be allowed additional opportunity to take proof;

3. That defendant be given leave to further cross-examine Ben Marshall, Secretary of the Kentucky State Tax Commission; and

4. That defendant be permitted to withdraw from the record the stipulations filed herein.

Harris W. Coleman, Attorney for Defendant.

Said foregoing Notice bears the following Sheriff's return on the back thereof, to-wit:

Executed April 20, 1928, by delivering a copy of the within Notice to Matt O'Doherty, attorney for Junius C. Klein.

Aubrey Cossar, S. J. C., by W. H. Wood, D. S.

[fol. 87] In Circuit Court of Jefferson County

[Title omitted.]

Motion to Set Aside Submission, etc.—Filed April 21, 1928

The defendant, by counsel, moves the Court as follows:

(1) That the submission of this cause be set aside.

(2) That the defendant be allowed opportunity to take additional proof herein.

(3) That the defendant be given leave to further cross examine Ben Marshall, Secretary of the Kentucky State Tax Commission.

(4) That the defendant be permitted to withdraw from the record stipulations filed herein on the 12th day of April, 1926.

Harris W. Coleman, Attorney for Defendant.

In Circuit Court of Jefferson County

Judgment—April 21, 1928

This action having been submitted upon the law and the facts, the pleadings, exhibits, evidence, stipulations filed herein and the deposition of Ben Marshall, it is now [fol. 88] ordered and adjudged by the Court that the action of the Jefferson County Board of Tax Supervisors in fixing and assessing for taxation for State purposes for the year 1925, of the common stock of the Standard Sanitary Manufacturing Company held and owned by the appellant and all other holders and owners of said stock residing in Jefferson County, Kentucky, at a valuation of $95.00 per share be and the same is hereby sustained; and it is further ordered and adjudged by the Court that said valuation at $95.00 per share of the common stock of the Standard Sanitary Manufacturing Company is its fair cash value estimated at the price it would bring at a fair and voluntary sale thereof as of the First day of July, 1924.

It is further ordered and adjudged by the Court that the appeal be and the same is hereby dismissed. To all of which appellant and all the other holders and owners of said common stock who reside in Jefferson County, Kentucky, object and except.

IN CIRCUIT COURT OF JEFFERSON COUNTY

MINUTE ENTRIES OF ORDER DENYING NEW TRIAL, ETC.

At a Court held on the 23rd day of April, 1928.

Came plaintiffs by counsel and moved the Court to set aside the judgment entered herein and grant him a new trial and filed grounds in support of said motion herein.

The Court being advised, ordered that the motion of plaintiffs for a new trial herein be and it is overruled, to [fol. 89] which the plaintiffs except.

It is further ordered by the Court that plaintiffs be and are given 60 days in which to prepare and file a bill of exceptions herein.

Came plaintiffs, by counsel, and prayed an appeal to the Court of Appeals of Kentucky herein.

Ordered by the Court that said appeal be and is hereby granted.

IN CIRCUIT COURT OF JEFFERSON COUNTY

[Title omitted]

MOTION AND GROUNDS FOR NEW TRIAL—Filed April 23, 1928

The Appellants, Junius C. Klein, and all other stockholders of the Standard Sanitary Manufacturing Company, Appellants herein, move the Court to set aside the judgment of the Court herein and to grant them a new trial in this case on the following grounds:

[fol. 90] First. Because the judgment of the Court is not supported by the Court's findings of the facts herein, and is contrary thereto and to the evidence;

Second. Because the Court's findings of law herein are not supported by the Court's findings of the facts herein and are contrary thereto;

Third. Because the judgment of the Court is contrary to the law and to the evidence and is not supported by the facts or evidence in the case.

John P. Haswell, Matt O'Doherty, Counsel for Appellants.

In Circuit Court of Jefferson County

[Title omitted]

Motion for Appeal to Court of Appeals—Filed April 23, 1928

[fol. 91] Came the appellants by counsel and move the Court for an appeal to the Court of Appeals herein.

John P. Haswell, Matt O'Doherty, Counsel for Appellants.

In Circuit Court of Jefferson County

Minute Entries of Order Settling Bill of Exceptions, etc.

At a Court held on the 23rd day of May, 1928.

Came plaintiffs by counsel and moved the Court to file their Bill of Exceptions and tender said Bill of Exceptions herein, to which the defendant objects.

Ordered by the Court that said motion be and it is assigned to Thursday, May 24th, 1928, for hearing at 10 A. M.

At a Court held on the 24th day of May, 1928.

Came parties by counsel and the motion of plaintiffs to file their Bill of Exceptions herein, heard by the Court.

The Court being advised, ordered said motion be and is sustained, to which the defendants except.

It is therefore ordered by the Court that said Bill of Exceptions be and is now filed and made a part of the record herein.

[fol. 92] In Circuit Court of Jefferson County

[Title omitted]

Bill of Exceptions—Filed May 24, 1928

Be it remembered that the parties Appellant and Appellee herein, on April 12th, 1927, filed herein the following stipulation in writing ful-y executed by them, agreeing upon and setting forth the facts to be considered by the Court on the final hearing and determination of this case in addition to those established by the deposition of Ben Marshall, Secretary of State Tax Commission, of Kentucky, which said deposition is also read on the trial.

The said stipulation reads as follows:

(Said Stipulation has heretofore been copied into this record as of April 12th, 1927, the day same was filed in Court, and may be found on Pages 53 to 58, inclusive.)

[fol. 93] Also the deposition of Ben Marshall:

(Said Deposition has heretofore been copied into this record as of February 28th, 1927, the day same was filed, and may be found on Pages 49 to 52½, inclusive.)

The foregoing was all and the only evidence heard by the Court or offered by the parties.

On April 21, 1928, the Court rendered judgment herein and filed in writing its separate findings of fact to each of said findings of fact the appellees excepted and conclusions of law as shown by the record, to each of which said conclusions of law the apellants excepted at the time and still except.

Within three days thereafter, on April 23, 1928, the Appellant filed his motion and grounds for new trial, which said Motion and Grounds for New Trial read as follows:

(Said Written Motion and Grounds for New Trial has heretofore been copied into this record as of April 23rd, 1928, the day same was filed in Court, and may be found on Pages 74 to 75, inclusive.)

The Court overruled the said Motion, to which Plaintiffs excepted at the time and still except.

Leave was given to the Appellant to prepare and file a Bill of Exceptions herein, which has been done within the

time allowed, and is now certified to be true and to contain all the facts agreed upon by the parties as set out in their stipulations, and all the evidence heard by the Court. [fols. 94 & 95] In testimony of all which witness the signature of Hon. John B. Baskin, presiding Judge of this Court, this May 24, 1928.

John B. Baskin, Judge.

This Bill is objected to and a hearing thereon is desired.
Harris W. Coleman, County Attorney.

In Circuit Court of Jefferson County

Order to Transmit Original Exhibit—June 13, 1928

Come the parties hereto by counsel, and by agreement it is ordered by the Court that the original Exhibit "BM#1" filed with the deposition of Ben Marshall may be withdrawn by the Clerk and transmitted with his Transcript of Record to the Court of Appeals of Kentucky.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 96] In Court of Appeals of Kentucky

Junius C. Klein, for Himself and on Behalf of All Other Stockholders of the Standard Sanitary Manufacturing Company Residing in Jefferson County, State of Kentucky, Appellant,

vs.

Jefferson County Board of Tax Supervisers, R. M. Martin, John Keller, E. W. Elliott, Ed Plenge, William C. Fischer, John D. Moore, Walter F. Jacobs, George H. Hinesley, Appellees

Statement of Appeal—Filed Aug. 21, 1928

The appeal in this case is from a judgment of the Jefferson Circuit Court, Common Pleas Branch, First Divi-

sion, rendered April 21st, 1928, and which may be found on pp. 72-73 of the Record.

The appeal was granted in the Court below by Order entered April 23rd, 1928, and which may be found on pp. 73-74 of the record.

Appellees' counsel is Mr. Harris Coleman, County Attorney, Jefferson County, Ky., whose office is 1212 Inter-Southern Building, Louisville, Ky.

The appellant's counsel are Mr. John P. Haswell, office Lincoln Building, Louisville, Ky., and Matt O'Doherty, In-
[fol. 97] ter-Southern Bldg., Louisville, Ky.

(Signed) Matt O'Doherty, John P. Haswell, Counsel for Appellant.

[fol. 98] In Court of Appeals of Kentucky

Minute Entry of Submission—Sept. 19, 1928

It is ordered that the foregoing case be submitted.

In Court of Appeals of Kentucky

Junius C. Klein, for Himself, et al., Appellants,

v.

Jefferson County Board of Tax Supervisors et al., Appellees

Appeal from a Judgment of the Jefferson Circuit Court, Common Pleas, First Division

Judgment—June 21, 1929

The Court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellees recover of the appellants their costs herein expended.

[fol. 99] IN COURT OF APPEALS OF KENTUCKY

JUNIUS C. KLEIN, for Himself, et al., Appellants,

v.

JEFFERSON COUNTY BOARD OF TAX COMMISSIONERS, et al., Appellees

Appeal from Jefferson Circuit Court, Common Pleas, Branch 1

Opinion of the Court by Commissioner Hobson. Affirmed

OPINION—June 21, 1929

Junius Klein in the year 1925 owned a large block of stock in the Standard Sanitary Manufacturing Company. The Assessor in making the assessment for that year valued the stock at $95.00 a share. Klein, and other taxtaxpayers similarly situated, applied to the Board of Supervisors of Tax of Jefferson County for relief from the assessment. The Board refused to modify it. They then appealed to the Jefferson quarterly court. The quarterly [fol. 100] court heard the case and on December 4, 1925, entered a judgment sustaining the action of the assessor and of the Board of Supervisors. Klein appealed to the Jefferson circuit court. The case was finally heard in the Jefferson circuit court on April 2, 1928. The circuit court sustained the judgment of the quarterly court. Klein appeals to this court. The case was submitted on September 19, 1928, but time was given the appellees to file brief and the final briefs were not filed until June 7, 1929. The case was then sent out to the court.

The Standard Sanitary Manufacturing Company is a corporation formed under the laws of the State of New Jersey. It had outstanding in 1925, 805,106 shares of stock of the par value of $25.00. Over three-fourths of the total properties of the corporation are located outside of Kentucky, and a little less than one-fourth is located within the State of Kentucky. The book value of the common stock of the company on December 31, 1924, was $41.93 per share. But the stock was in fact selling in the market for about a hundred dollars per share in July, 1925. In February

1925, it sold as high as $145.00 a share. The corporation paid its taxes in the State of Kentucky. Klein contends: (1) The stockholders cannot be taxed under the Constitution of Kentucky. (2) The assessment at $95.00 a share is not warranted. (3) The assessment is a denial to him of the equal protection of the law under the Fourteenth Amendment of the Constitution of the United States.
[fol. 101] Section 171 of the Constitution provides:

"Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation with the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws. The general assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation."

Section 4088, Kentucky Statutes, passed pursuant to this provision of the Constitution provides:

"The individual stockholders of a corporation, at least seventy-five per cent (75%) of whose total property is taxable in Kentucky, shall not be required to list their shares for taxation so long as the corporation pays taxes on all its property in Kentucky (including the corporate franchise when the franchise is required to be assessed), provided the shareholder furnishes satisfactory proof to the taxing authorities that at least three-fourths of the total property of such corporation is taxed in Kentucky."

In Shinkle's estate v. Board of Supervisors, 216 Ky. 60, this court thus stated its conclusion under these provisions:

"It seems to be well settled that it is within the legislative power to tax the property of a corporation at its fair cash value, including its franchise, and at the same time [fol. 102] require the stockholders to list and pay taxes upon the shares of stock held by them without violating any of the provisions of our Constitution or of the federal Constitution. Franklin County v. Bank of Frankfort, 87 Ky. 370; McElroy, Sheriff v. Walsh's Trustee, 133 Ky. 113. In the last case above cited the court observed: 'While it is true the state may have taxed the franchise, which includes

the capital of the corporation, and taxed also the shareholder upon his shares, it has not done so.' The principle was well expressed by the Supreme Court of the United States in New Orleans v. Houston, 119 U. S. 265, where it was said: 'It is well settled by the decisions of this court that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and, where that is the legislative intent clearly expressed, that both may be taxed.' See also Tennessee v. Whitworth, 117 U. S. 129; Bank of Commerce v. Tennessee, 161 U. S. 134; Cooley on Taxation, vol. 1, section 246."

The same question was reconsidered in Silver *b.* Board of Supervisors, 221 Ky. 100, the court again said:

"The Fourteenth Amendment to the federal Constitution is not a protection in all cases against unwise state legislation. It imposes no fixed rule of taxation upon the states. [fol. 103] It protects against such discrimination as amounts to a denial of the equal protection of the law or a deprivation of property without due process of law. There is nothing in that amendment that forbids states enacting laws providing for double taxation so long as the law bears uniformly on all property within the particular class and do not discriminate against one taxpayer in favor of another. It is not double taxation, however, in our judgment, to require the assessment of the property of a corporation as a corporate entity and also require the assessment of the shares of stock of the corporation in the hands of individual holders."

In that case it was contended by Siler that it was a discrimination to require the assessment of shares of stock in the hands of individual holders if the corporation owned less than 75% of its total property in Kentucky, and to exempt the shares of stock in a corporation from assessment where it owned 75% or more of its total property in Kentucky. The court after considering a number of cases rejected this contention in these words:

"After a careful consideration of the facts alleged in appellant's petition and the law applicable thereto, we have reached the conclusion that the action of the board

of supervisors was correct, and that appellant was entitled to no relief from the assessment thus imposed upon him." P. 106.

[fol. 104] Upon re-consideration of the question the court adheres to the conclusion it then reached. Under the Constitution the legislature is expressly authorized to classify property. The classification here made rests upon a reasonable foundation and necessarily in such matters the question must be left to the judgment of the legislature.

Appellant complains that his property is assessed at $95.00 a share when land in Jefferson County is only assessed at about 70% of the average sale value, in voluntary sales. In the classification of property land is placed in one class, corporate stock in another. They are taxed at different rates. Appellant cannot at least complain that property in a different class from his property is assessed too low, unless the inequality is gross or such as to show an unreasonable discrimination. This is not shown. The proof shows that the purchaser of land is generally a person who wants that property and is willing to pay more for it than one who does not need it. Private sales are usually made on credit and people will pay more for property on credit than for cash. The Board of Tax Commissioners, sitting in Louisville and acquainted with local conditions, judged that 70% of the sale values represented about fairly the cash value of real estate. Some weight must be given to their judgment, for after all this is a matter of judgment. On the other hand appellant's stock is valued according to the price it was bringing day by day on the stock market. He does not deny that his stock was [fol. 105] selling at $95.00 a share day by day. There is no better way of fixing the actual cash value of a thing than the average of such daily sales for cash. The Constitution of the state requires that all property shall be assessed at its fair cash value, at voluntary sale. The court is unable to see, therefore, that appellant is entitled to any relief under the Constitution of Kentucky.

He earnestly insists that he is denied by the statute the equal protection of the law and relies on the case of Louisville Gas Co. v. Coleman, 276 U. S. 32. In that case the supreme court reversed this court and held that the statute

taxing mortgages running over five years and not taxing mortgages running five years or less was invalid, on the ground that the classification was arbitrary. It is insisted that the same rule should be applied here. But the court is unable to see that it has any application. That case seems to rest upon the idea that long time mortgages are made by corporations and short time mortgages are made by the poor whose credit is not good, and that the statute taxed the corporations and exempted from taxation individuals. But there are no such facts here. All corporations and all individuals are treated exactly alike on the same state of facts. There is a substantial reason for putting stockholders in corporations not paying taxes in Kentucky on so much of their property on a different footing from those so paying taxes in Kentucky. When the corporation's property is all in Kentucky and its property is all assessed and the taxes are paid thereon, the property so taxed has in fact borne its fair share of the public burden. Not to assess the stockholders on his stock then is simply to treat the corporation as a firm is treated. But the legislature perceived that to do justice a line must be [fol. 106] drawn; for if 1 per cent of the property of the corporation was not assessed, injustice would be done to assess the stockholder, so to do substantial justice the legislature fixed 75% as the basis. But a large part of the property in any state is never assessed at its fair value. This known of all men, and so the legislature when it came to consider whether stockholders in corporations should be taxed, where the corporation had paid taxes on all its property, did not require that the taxes should be paid by the corporation upon 100% of its property, but fixed a basis of 75%. The reason was to allow a margin. It was an effort to put everybody upon equality, and not to require the stockholders to pay when the corporation had paid on an assessment of its property as large as that of much of the property in the state. The act of the legislature is simply an effort to approximate justice by a classification resting on reasonable grounds, which are familiar to anyone who knows anything of the assessment of property in the state. The classification which the legislature made was not in the interest of the poor man or against the corporation. By the statute in force for many

years, the stockholder was not taxed on his stock if the corporation paid the taxes on its property and its franchise tax, See Kentucky Statutes 1903, Secs. 4085, 4088. Perceiving that this was unjust where the corporation only paid taxes on a small part of its property, the legislature amended the statute so as to make it only applicable when the corporation paid taxes in Kentucky on one-fourth of its property Kentucky Statutes 1922, Sec. 4088. Considering [fol. 107] that much property in the state was thus escaping taxation when the corporation paid taxes here on only one-fourth of its property and the stockholders were not taxed on their stock, the legislature again amended the statute and put it in the form above quoted. It was realized that a reasonable line should be drawn; a small deficiency should not defeat the statute. The stockholder should not be taxed if the corporation was in substance paying taxes in Kentucky on all its property. The allowance of a margin of ten per cent plainly would not have been unreasonable. The allowance of twenty-five per cent was equally plainly a reasonable effort to do justice to all in view of the way all our other assessments are made.

Appellant's property is taxed just like all other property, and that the stock of stockholders in corporations paying taxes on more than seventy-five per cent of their property is not taxed, is of no more concern to him than to every other taxpayer in the state. The question here presented is whether appellant was properly taxed. In Hart Refineries v. Harman, U. S. Advance Sheets, March 1, 1929, p. 240, the United States Supreme Court, citing a number of previous cases, said this:

"But because the state legislature could have laid a tax upon the use of the commodity as well as upon its sale, it by no means follows that a failure to do so constituted a discrimination forbidden by the equal protection clause of the 14th Amendment. That clause does not prohibit classification; and the power of the state to classify for [fol. 108] purposes of taxation is of wide range and flexibility, provided that the classification rest upon a substantial difference so that all persons similarly circumstanced will be treated alike. Statutes which tax one class of property while exempting another class necessarily result in

imposing a greater burden upon the property taxed then would be the case if the omitted property were included. But such statutes do not create an inequality in the constitutional sense. Not is the imposition of an excise tax upon one occupation or one activity from which other and different occupations or activities are exempt, a denial of equal protection. It is enough if all in the same class are included and treated alike. These propositions are so firmly established by repeated decisions of this court that further discussion is unnecessary."

This seems to the court to apply equally well here. In the making of a classification a line must be drawn somewhere. In the following cases statutes were sustained making classifications similar to that here: A statute fixing the rates of fare on railroads according to their length, 15 miles, from 15 to 75 miles, over 75 miles. Dow v. Beidelman, 125 U. S. 680. A statute permitting railroads less than 50 miles in length to heat passenger cars by stove or [fol. 109] furnace or to operate trains without a complete crew, New York & C. Railroad Co. v. N. Y. 165 U. S. 628, Chicago, & C. R. R. Co. v. Ark. 219 U. S. 453. A statute providing for inspection in mines employing six men or more, but not to those employing five, or requiring screens where then men were employed. Consolidated Coal Co. v. Illinois, 185 U. S. 203, McLean v. Ark. 211 U. S. 539. A statute requiring a wash room at the request of 20 employees, but not where only 19 requested. Booth v. Indiana, 237 U. S. 391. The same rule was allied to Workmen's Compensation laws which only apply to employers of certain number of men. Jeffry Manufacturing Co. v. Blagg, 235 U. S. 571, and to fire inspection laws applicable to hotels having 50 rooms. Miller v. Strahl, 239 U. S. 426, or to the herding of sheep within two miles of a dwelling house, Bacon v. Walker, 204 Ky. 311, or exempting banks whose transactions average $500.00 or more, Engel v. L'Malley, 219 U. S. 128. Any number of similar cases might be cited. In Citizens Telephone Co. v. Fuller, 229 U. S. 322, the court thus stated the rule:

"Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great

or conspicuous. Keeney v. New York, 222 U. S. 536, 56 L. Ed. 305, 38 L. R. A. (N. S.) 1139, 32 Sup. Ct. Rep. 105. The state is not bound by any rigid equality. This is the rule; its limitation is that is must not be exercised in 'clear and hostile discriminations between particular persons and [fol. 110] classes.' See Quong v. Kirkendall, 223 U. S. 59, 62, 63, 56 L. ed. 350-352, 32 Sup. Ct. Rep. 192. Thus defined and thus limited, it is a vital principle, giving to government freedom to meet its exigencies, not binding its action by rigid formulas, but apportioning its burdens, and permitting it to make those 'discriminations which the best interests of society require.' "

The classification made by the legislature is just, and reasonable and is clearly such a discrimination as the best interests of society requires.

Where the legislature has classified property, taxes must be uniform on each class of property, but the taxes on the different classes are not required to be uniform; for this is the purpose of classification. Under the statute appellants' stock pays only state taxes on its assessment and is exempt from all local or municipal taxation, which amounts to much more than the state taxes, a burden that real estate bears, so on the whole case it appears to the court that he can not complain that he is denied the equal protection of the law, or that injustice has been done to him. Under the power to classify property, the legislature is not required to put all stockholders in one class, but may make a reasonable classification of stockholders. The classification placing those in one class where the corporation has paid taxes in Kentucky on 75% of its property and those in another class where the corporation has paid taxes in Kentucky on less than 75% of its property rests on reasonable grounds. Appellant cannot complain that land in Jefferson county is equalized at 70%; for land is equalized [fols. 111 & 112] in each county by the county board because land values depend on local conditions; but intangible property is equalized by the state board and is uniform throughout the state. Siler v. Board of Supervisors, 221 Ky. 102.

Judgment affirmed.

RB.

[fol. 113] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Sept. 14, 1929

Now comes Junius C. Klein, plaintiff in error in the above entitled cause, and in connection with his petition for an appeal or writ of error in this cause assigns the following errors, which plaintiff in error avers occurred on the trial thereof and upon which he relies to reverse the judgment entered herein as appears of record:

1. The Court of Appeals of Kentucky erred in affirming the judgment of the Jefferson Circuit Court sustaining the demurrer to plaintiff in error's petition, filed in this cause and dismissing plaintiff in error's petition.

2. The Court erred in overruling plaintiff in error's contention that the Statute in question, Section 4088, Kentucky Statutes, as amended by Acts of 1924 was in conflict with and in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The Court erred in holding that no right secured to the plaintiff by the Fourteenth Amendment to the Constitution of the United States was violated by the imposition by the defendants of the assessment complained of.

4. The Court erred in holding and adjudging that the plaintiff was not by the assessment complained of deprived of its property without due process of law.

[fols. 114 & 115] 5. The Court erred in holding that Section 4088, Kentucky Statutes, (Carroll's 1922 edition) as amended by chapter 116, page 402, section 2, of the Acts of 1924 of the General Assembly of Kentucky, was not in conflict with or in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Court erred in holding that said Section 4088, Kentucky Statutes was not in conflict with sections 170, 171 and 172 of the Constitution of the State of Kentucky.

Wherefore the appellant prays that the said judgement be reversed and that the said Court of Appeals of Kentucky be ordered to enter a judgement reversing the judgement

of the Jefferson Circuit Court, appealed from by the appellant to the said Court of Appeals of Kentucky, and directing the said Jefferson Circuit Court to enter judgement in appellant's favor, setting aside said judgement heretofore entered dismissing the plaintiff's petition and directing it to overrule the demurrer to said petition, and to hold the assessment complained of to be null and void and of no force and effect.

(Signed) Homer W. Batson, Attorneys for Appellant.

[fol. 116] In Circuit Court of Appeals of Kentucky

[Title omitted]

Petition for Appeal—Sept. 14, 1929

To Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, and the Associate Justices of said Court:

Now comes Junius C. Klein, plaintiff in error, in the above cause and would show unto this honorable court that in the record and proceeding and rendition of the decree in the above cause by the Court of Appeals of the State of Kentucky, it being the highest court of said state in which a decision could be had on the said suit between Junius C. Klein and the Board of Tax Supervisors of Jefferson County, Kentucky, manifest error has occurred greatly to his damage, whereby petitioner feels aggrieved.

That in the record and proceedings it will appear that there was drawn in question the validity of Section 4088, Kentucky Statutes (Carroll's edition 1920) as amended by Act of General Assembly of Kentucky of March 4, 1924, being Chapter 116, page 402, Section 2, of the Acts of the General Assembly of Kentucky of 1924, which it is claimed is repugnant to and in violation of the Fourteenth Amendment to the Constitution of the United States in that it denies to the plaintiff in error the equal protection of the laws and discriminates against the plaintiff in error one of a class of taxpayers and in favor of another class of taxpayers and that it deprives plaintiff in error of his property without due process of law and the decision in

said court was in favor of the validity of said statute, all of which is fully apparent in the record and proceedings of the case and specifically set forth in the assignment of [fols. 117 & 118] errors filed herewith.

Wherefore petitioner prays that his appeal be allowed and that a transcript of the record, proceedings and papers upon which said orders were made duly authenticated be ordered sent to the Supreme Court of the United States at Washington, D. C. under the rules of said court in such cases, made and provided that the same may be inspected and corrected as according to law and justice should be done.

(Signed) Homer W. Batson, Counsel for Plaintiff in Error.

[fols. 119 & 120] In Court of Appeals of Kentucky

[Title omitted]

Order Allowing Appeal to Supreme Court of United States—Filed Sept. 14, 1929

On this the 14th day of September, 1929, came on to be heard the application of Junius C. Klein, appellant, said appellant being represented by counsel, for an appeal or writ of error and it appearing to the court from the petition filed herein and the record filed therewith that the application ought to be granted and that a transcript of the record and proceedings and papers upon which the judgment of the court was rendered, properly certified, should be sent to the Supreme Court of the United States as prayed for in the petition, that such proceedings may be had as will be just in the premises.

It is therefore ordered that the appeal or writ of error be allowed upon the appellant giving bond, conditioned as the law directs, in the sum of $2,500.00, and that a true copy of the record, assignment of errors and all proceedings had in the case in the Court of Appeals of Kentucky shall be transmitted to the Supreme Court of the United States, properly certified as the law directs; that the said

court may inspect the same and do what according to law should be done.

D. A. McCandliss, Chief Justice of Court of Appeals of Kentucky.

[File endorsement omitted.]

[fols. 121-123] Bond on appeal for $2,500, approved and filed Sept. 14, 1929, omitted in printing.

[fol. 124] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept 14, 1929

To the Clerk of the Court of Appeals of Kentucky:

The appellant and Plaintiff in Error, Junius C. Klein, having been awarded a writ of error herein by the Supreme Court of the United States to the Court of Appeals of Kentucky, desires the entire record herein, together with all exhibits, orders and judgments, to be copied and incorporated in the transcript for the use of the Supreme Court of the United States upon said Writ of Error.

(Signed) Homer W. Batson, Attorney for Appellant.

Notice accepted and service waived. (Signed) J. W. Cammack, Attorney General.

[File endorsement omitted.]

[fols. 125 & 126] Citation, in usual form, and waiver, filed September 14, 1929, omitted in printing.

[fol. 127] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 128] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Oct. 26, 1929

Comes now the plaintiff-in-error, Junius C. Klein, for himself and on behalf of all other stockholders of the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, in the above entitled cause, and states that the points upon which he intends to rely in this court and in this case are as follows:

Point I. Kentucky Statutes Section 4088, as amended by the Acts of 1924, in making a distinction for purposes of taxation between shares of stock in corporations which have 75% or more of their total property within the State of Kentucky, and shares of stock in corporations which have less than 75% of their total property within the State of Kentucky, makes an unreasonable, arbitrary and illegal classificafion of corporate stock for purposes of taxation, and said Section of the Kentucky Statutes, as amended, is, therefore, in conflict with, and in violation of, the Fourteenth Amendment to the Constitution of the United States; and the Kentucky Court of Appeals erred in not finding and holding that said classification made by said Statute is [fol. 129] unreasonable, arbitrary and illegal, and in conflict with, and in violation of, the Fourteenth Amendment to the Constitution of the United States.

Point 2. Kentucky Statutes Section 4088, as amended by the Acts of 1924, discriminate against the holder of stock in a corporation having less than 75% of its total property within the State of Kentucky, and in favor of the holder of stock in a corporation which has 75% or more of its total property within the State of Kentucky, thus denying to the holder of the former class of stock the equal protection of the laws enjoined by the Fourteenth Amendment to the Constitution of the United States; and the Kentucky Court of Appeals erred in not finding and holding that the classification made by Kentucky Statutes Section 4088 as amended, does not deny to the holder of the former class of stock the equal protection of the laws enjoined by the Fourteenth Amendment to the Constitution of the United States.

Point 3. Kentucky Statutes Section 4088, as amended by the Acts of 1924, in making a distinction for purposes of taxation between shares of stock in corporations having 75% or more of their total property in the State of Kentucky, and shares of stock in corporations having less than 75% of their total property in the State of Kentucky, and subjecting to assessment and taxation the latter class of stock, taxes in Kentucky the property of the holder of stock in corporations having less than 75% of their total property in Kentucky, and property of the appellant and plaintiff-in-error, and of all other stockholders of the Standard Sanitary Manufacturing Co., residing in Jefferson County, State of Kentucky, which is located outside the State of Kentucky and is subject to taxation elsewhere, and which has been duly assessed, and upon which all taxes, both property and franchise, have been paid in the respective States where said property is located, and said Section 4088 [fol. 130] of the Kentucky Statutes as amended, on that account violates the Fourteenth Amendment to the Constitution of the United States; and the Kentucky Court of Appeals erred in not finding and holding that on account of such taxation in Kentucky of property located outside the State of Kentucky said Section is in violation of the Fourteenth Amendment to the Constitution of the United States.

Point 4. Kentucky Statutes Section 4088, as amended by the Acts of 1924, in making a classification for the purpose of taxation between shares of stock in a corporation having 75% or more of its total property in the State of Kentucky, and shares of stock in corporations having less than 75% of its total property in the State of Kentucky, adopts the policy of avoiding double taxation of property in corporations, all or 75% of whose property is in the State of Kentucky, and provides for double taxation of the property of corporations having less than 75% of their property in the State of Kentucky, both as to the property located within the State of Kentucky and the property located outside the State of Kentucky, and by such double taxation of the property of such corporations said Section 4088 as amended, violates the Fourteenth Amendment to the Constitution of the United States; and the Kentucky Court of Appeals erred in not finding and holding that on account

of the double taxation provided by said Statute, said Section as amended is in violation of the Fourteenth Amendment to the Constitution of the United States.

Point 5. Kentucky Statutes Section 4088, as amended by the Acts of 1924, is not subjecting to taxation stock in a corporation having 75% or more of its total property within the State of Kentucky, and in providing for taxation of stock in a corporation having less than 75% of its total property within the State of Kentucky, is in conflict with [fol. 131] Sections 170, 171 and 172 of the Constitution of the State of Kentucky; and the Kentucky Court of Appeals erred in not holding that said Section as amended is in conflict with Sections 170, 171 and 172 of the Constitution of the State of Kentucky.

Point 6. The defendants-in-error, acting as the Board of Tax Supervisors of Jefferson County, Kentucky, have, in assessing the plaintiff-in-error's property, and the property of all other stockholders of the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, in excess of its fair cash value as shown by the uncontradicted evidence of the real value of such stock, deprived the plaintiff-in-error and said other stockholders, of their property in violation of the rights secured to him and them by the Fourteenth Amendment to the Constitution of the United States; and the Kentucky Court of Appeals erred in not finding and holding that said assessment deprived the plaintiff-in-error and said other stockholders of their property in violation of the rights secured to him and them by the Fourteenth Amendment to the Constitution of the United States.

Point 7. The defendants-in-error, acting as the Board of Tax Supervisors of Jefferson County, Kentucky, have, in assessing the plaintiff-in-error's property, and the property of all other stockholders of the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, on a much higher pro rata basis (approximately 100%) of its fair cash value than they assessed real estate (69.9% of its fair cash value) within the same county for the same year, and upon a much higher pro rata basis than real estate was assessed in all counties of the State of Kentucky for said year (65 to 70% of its fair cash value), denied

to the plaintiff-in-error and to said other stockholders the [fol. 132] equal protection of the law guaranteed to him and them by the Fourteenth Amendment to the Constitution of the United States; and the Kentucky Court of Appeals erred in not finding and holding that said assessment denied to the plaintiff-in-error and said other stockholders the equal protection of the law guaranteed to him and them by the Fourteenth Amendment to the Constitution of the United States.

Point 8. The Kentucky Court of Appeals erred in holding that no right secured to the plaintiff by the Fourteenth Amendment to the Constitution of the United States was violated by the imposition by the defendants upon the appellant and plaintiff-in-error, and upon all other stockholders of the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, the assessment of stock complained of in this action.

Point 9. The Kentucky Court of Appeals erred in holding and adjudging that the appellant and plaintiff-in-error, and other stockholders of the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, were not, by the assessment complained of, deprived of their property without due process of law, as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

Point 10. The Kentucky Court of Appeals erred in finding and holding that the defendants-in-error did not by the assessment of the stock of the appellant and plaintiff-in-error and of all other stockholders of the Standard Sanitary Manufacturing Company, residing in Jefferson County, State of Kentucky, upon a different pro rata basis of the actual value, violate Sections 171, 172 and 174 of the Kentucky Constitution.

And the plaintiff-in-error further states that the whole of [fols. 133 & 134] the record, as filed, is necessary for the consideration of the above points.

Homer W. Batson, Edmund F. Trabue, Blakey Helm, Counsel for Plaintiff-in-error.

Received two copies Oct. 24, 1929. Samuel B. Kirby, Jr., Asst.-Atty. Gen'l of Ky., for Dept. in Error.

[fol. 135] Acknowledgment is made of the receipt of two copies of the Statement of points to be relied upon and designation of the parts of the record to be printed, to be filed by the plaintiff-in-error.

Samuel B. Kirby, Jr., Asst. Atty. Genl. of Ky. Attorney for Defendant-in-error.

[fol. 136] [File endorsement omitted.]

Endorsed on cover: File No. 34,573. Kentucky Court of Appeals. Term No. 442. Junius C. Klein, appellant, vs. Board of Tax Supervisors of Jefferson County, Kentucky. Filed October 14, 1929. Filed No. 34,573.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 11

JUNIUS C. KLEIN, ETC., - - - - - - *Appellants,*

vs.

BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY, - - - - - *Appellees.*

PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

EDMUND F. TRABUE,
Counsel for Appellants.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 442.

JUNIUS C. KLEIN, ETC., - - - - - - *Appellants,*

vs.

BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY, - - - - - - *Appellees.*

PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

A. The statutory provision which sustains the jurisdiction of this Court in U. S. Code, Title 28, Section 344 (Judicial Code, Section 237, Paragraph A), providing for jurisdiction of the Supreme Court where the validity of the Statute of the State of Kentucky (Ky. Stat., Sec. 4088) is drawn in question as being repugnant to the Fourteenth Amendment to the Constitution of the United States, and the decision of the highest Court of the State of Kentucky was in favor of the validity of the Statute.

B. The judgment of the State Court was rendered on the 21st day of June, 1929, and is found on page 91

of the Transcript filed in this Court on October 14, 1929, printed record, page ; and the date on which the application for appeal was presented was the 14th day of September, 1929, and is found on page 116 of the Transcript and page of the printed record.

C. The nature of the case is an assessment by the taxing authorities of Jefferson County, State of Kentucky, of shares of the capital stock of the Standard Sanitary Manufacturing Company held by appellant, Junius C. Klein, and others, residents of Jefferson County aforesaid, as of July 1, 1924, assessed as required by Carroll's Kentucky Statutes, 1922, Section 4088, and appeals from the action of the Jefferson County Board of Tax Supervisors sustaining such assessment to the Jefferson Quarterly Court, and from the action of such Court affirming the action of said Board to the Jefferson Circuit Court, and from the judgment of said Court to the Court of Appeals of Kentucky, upon the ground that taxation of said shares of capital stock held by appellant and said others denied to them the equal protection of the laws and due process of law required and enjoined by the Fourteenth Amendment to the Constitution of the United States, and arbitrarily discriminated against them in violation of said amendment to said Constitution; and that the assessment of said shares of stock as made by said taxing authorities denies to the appellant and to all other stockholders of said corporation the equal protection of the laws and due process of law required and enjoined by the Fourteenth Amendment to the Con-

stitution of the United States, and arbitrarily discriminated against them in violation of said amendment to said Constitution, all of which appears in the Statement of Points filed in this Court on the 26th day of October, 1929.

The points aforesaid upon which the jurisdiction of this Court is based were made by appellant in his pleadings or statements in the Jefferson Quarterly Court, the Jefferson Circuit Court, and the Court of Appeals of Kentucky, as appears in the Transcript, pages , printed record, pages .

D. Among the many cases believed to sustain the jurisdiction of this Court are:

Louisville Gas & Elec. Co. v. Coleman, Auditor, 277 U. S. 32;
Northern Pacific Ry. Co. v. Department of Public Works, *et al.*, 268 U. S. 39;
Love v. Griffith, 266 U. S. 32;
Greene v. Louisville & Interurban R. R. Co., 244 U. S. 499;
Consolidated Turnpike Co. v. Norfolk & Ocean Ry. Co., 228 U. S. 326.

EDMUND F. TRABUE,
Counsel for Appellants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. [redacted] 11

JUNIUS C. KLEIN, ETC., - - - - - - *Appellants,*

vs.

BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY, - - - - - - *Appellees.*

APPENDIX, OR EXHIBIT, WITH THE PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

The Kentucky Statutes providing for the procedure on assessment and appeals, described on *page 2, item C*, are as follows:

Section 4123. Reconvening to hear complaints; witnesses.

"The board, in reassembling, shall hear all complaints and pass upon the assessment of all taxpayers, and for that purpose the board, in counties having therein a city of the first or second class, shall remain in session not less than one nor more than ten days, and in other counties not less than

one nor more than five days. The board may summon and swear witnesses and require them to testify. Any person who shall wilfully fail to obey the summons of the board or shall refuse to testify before it when required shall be deemed guilty of a misdemeanor, and, on conviction, be fined not less than twenty five dollars ($25.00) nor more than one hundred dollars ($100.00) for each offense" (*Id.*, Sec. 9, as amd. April 11, 1917, c. 1., p. 3, Sec. 27).

Section 4128. Errors do not invalidate assessment; appeal.

"Any informality or irregularity in the execution of their duties as supervisors and any failure of duty on their part shall not render any assessment invalid. But any taxpayer feeling himself aggrieved by the action of said board of supervisors may appeal to the quarterly court within thirty days after the final adjournment of said board by filing with the judge of said court a certified copy under the hand of the clerk of said board of the action of said board. He shall have the right to appeal from the decision of the quarterly court to the circuit court and then to the court of appeals in the same manner that the law now allows appeals in civil cases. It shall be the duty of the county attorney to represent the board in all such suits pending before the quarterly or circuit court, and it shall be the duty of the attorney general to represent the board in the court of appeals. When any such appeal is taken it shall be the duty of the county attorney to forthwith notify the state tax commission in writing of such

appeal, and if he fails to so notify the state tax commission within ten days after such an appeal has been taken to the quarterly court he shall be guilty of a misdemeanor and upon conviction may be fined in any sum not to exceed one hundred dollars ($100.00). If the county attorney or sheriff feel that the state, county or any taxing district has been aggrieved by the action of the board of supervisors, or on account of the failure of said board to act, then either of said officers may appeal to the quarterly court by filing with the judge thereof a brief statement showing the action of the board of supervisors or stating wherein it failed to properly act. The quarterly court shall hear evidence and pass upon all such appeals and either of said officers or tax commission may appeal to the circuit court and then to the court of appeals the same as in other civil cases. It shall be the duty of the county attorney to represent the interest of the state and county in all such appeals in the quarterly and circuit court, and it shall be the duty of the attorney general to represent the interest of the state and county in the court of appeals. Where an appeal is taken by the county attorney or sheriff as herein provided, it shall be the duty of the county attorney to notify the state tax commission in like manner as when an aggrieved taxpayer appeals, and if he fails so to do he shall be subject to a like penalty" (*Id.*, Sec. 14, as amd. April 11, 1917, c. 1., p. 3, Sec. 32).